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The Sheikh Jarrah Affair:

***The Strategic Implications of Jewish Settlement
in an Arab Neighborhood in East Jerusalem***

Yitzhak Reiter and Lior Lehrs

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Table of Contents

The Authors	5
Summary.....	6
Introduction.....	11
Part A – Historical, Political, and Legal Background.....	13
1. The Histories of Sheikh Jarrah and Shimon HaTzadik	13
2. The Use of Symbols of Heritage and Holiness.....	20
3. The Geopolitical Significance of the Neighborhood	22
4. Proprietary and Legal Issues Behind the Displacement of Palestinian Families	23
5. The Eviction of Palestinian Residents	29
6. Legal Issues Related to the Properties in East and West Jerusalem	31
7. Jewish Settlement in the Heart of Arab Neighborhoods in East Jerusalem	39
Part B – Strategic and Political Implications	43
1. The Opening of the “1948 Files” Regarding Restitution of Palestinian Properties in West Jerusalem and Israel	43
2. Restricting the Government’s Freedom of Action During Negotiations for a Possible Agreement on Jerusalem.....	50
3. De-Legitimization of Israel.....	52
4. Undermining Israel’s Diplomatic Achievements on the Issue of Jerusalem	60
5. Adding a Focal Point of Tension in Jerusalem	63
Part C – Options for Government Action.....	66
Conclusions.....	71
Annexes	72

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Summary

In September 2010 the Supreme Court of Israel rejected Palestinian appeals claiming ownership of 57 housing units in the neighborhood of Sheikh Jarrah in Jerusalem – where dozens of Palestinian families have resided since the days of Jordanian control over East Jerusalem – and accepted the claim of Jewish ownership of the property. This ruling combines with earlier, similar rulings in laying the legal foundation for eviction of Palestinian families from two adjacent compounds and settlement of Jews in the neighborhood. The ruling of September 2010 is another instance in a long series of events involving legal proceedings that address private property rights and are in discord, possibly even in conflict, with Israel's political interests.

This paper aims to analyze the strategic implications of Jewish settlement in the heart of the Sheikh Jarrah neighborhood for the State of Israel's vital interests. It also aims to examine the various tools available to the authorities in addressing this issue and in conveying to decision makers the need to formulate a policy of action that accords with the interests of the State of Israel.

Jewish settlement in Sheikh Jarrah (in the compounds of Shimon HaTzadik and Nahalat Shimon/Umm Haroun) reflects a growing pattern of Jewish settlement in the heart of Arab neighborhoods in East Jerusalem based in part on legal proceedings addressing the private property rights of Jews. There have indeed been a few previous instances of reclaimed ownership and possession of Jewish property in an Arab neighborhood in East Jerusalem, but the Sheikh Jarrah affair involves an effort to evict the residents of two entire compounds housing dozens of Palestinian families.

Sheikh Jarrah has historical significance with respect to the national and religious identity of both Palestinians and Jews, and this significance is being invoked in the current conflict between the two sides. The location of the neighborhood – between East and West Jerusalem, at the crossroads linking the Old City to Mount Scopus and to the northeast part of the city, amidst consulates and centers of international organizations – grants it geopolitical importance at the municipal and international levels.

In 1956 the government of Jordan in cooperation with the United Nations Relief and Works Association (UNRWA) housed 28 families of Palestinian refugees as tenants in a compound built on lands owned by two Jewish trusts and managed after 1948 by the Jordanian “Custodian of Enemy Property.” In 1972 the Israeli Custodian General ordered that the property be released and registered under the ownership of the Jewish trusts, who demanded rental payment from the refugee families residing there. Since the 1990s, the two endowments – together with the settlers’ organization Nahalat Shimon, to which they granted rights to the property – have been filing legal petitions for the eviction of Palestinian tenants as part of a plan for widespread Jewish construction and settlement in Sheikh Jarrah. These proceedings resulted in court rulings that led to the eviction of four Palestinian families that had resided there. Similar legal petitions are pending against additional families. A nearby compound named Umm Haroun has dozens of housing units in which Palestinian refugees reside as protected tenants and which the Custodian General confirmed are also Jewish-owned. Jewish settlement organizations are taking steps to purchase these units, and a first Jewish family has already settled into one of them.

Jewish settlement in Sheikh Jarrah is the work of private entities using legal procedures to reclaim their property rights. Through their actions, these entities are establishing facts on the ground that do not necessarily accord with the vital interests of the State of Israel. This settlement activity has possible strategic implications for Israel in the following areas:

1. The opening of the “1948 files”:

The State of Israel has a vital interest in maintaining a negotiating framework that addresses the issues arising from the events of 1967 and does not open 1948-related issues for discussion. The Israeli interest in relation to refugee property is the formulation of an equation of mutual concession over property – both Palestinian and Jewish – that was lost as a result of the conflict. The reclaiming of Jewish ownership and possession rights in Sheikh Jarrah specifically and in East Jerusalem generally could lead to **the opening of the “1948 files,” inspiring and even encouraging claims for restitution of refugee properties within West Jerusalem neighborhoods**. The inequality between Jews and Arabs on matters involving the return of property abandoned

because of the 1948 War is unacceptable to the international community and unexplainable for Israel.

2. *Restricting the government's freedom of action during negotiations*

The settlement in Sheikh Jarrah has the potential to **restrict the government's freedom of action in its pursuit of a future agreement with the Palestinians and, in so doing, to pose additional obstacles to the advancement of the peace process**. Indeed, Jewish settlement in the heart of Arab neighborhoods generally and in Sheikh Jarrah specifically can frustrate the possibility of Israeli-Palestinian compromise over Jerusalem on the basis of division of sovereignty between Jewish and Arab neighborhoods ("the Clinton parameters") as part of a final status agreement. Moreover, the eviction of Palestinian families creates an additional focal point for conflict, another in a list of issues within Jerusalem (like Silwan / City of David; Ras al-Amud, and others) and beyond that disrupt the potential creation of an appropriate environment for advancing negotiations between Israel and the Palestinians.

3. *De-Legitimization of Israel*

The eviction of Palestinian families and the settlement of Jews instead in the heart of an Arab neighborhood and under widespread media coverage serve to put additional ammunition in the hands of entities that seek to **strike at the legitimacy of Israel in the realm of human rights. This could contribute to the de-legitimization of Israel within global public opinion**. The evictions, even if backed by judicial ruling, have a negative impact on the image of Israel among western governments as well, including friendly governments such as the United States. A case such as this highlights the unequal implementation of rights of Jews over property they owned before 1948 while the Arab residents of the city cannot similarly reclaim their property in West Jerusalem specifically or in Israel generally.

4. *Undermining Israel's diplomatic achievements on the issue of Jerusalem*

Jewish settlement in Sheikh Jarrah could undermine the willingness of the international community and the Palestinian negotiators to accept the existence

of Jewish neighborhoods in East Jerusalem and Israeli rights in the Holy Basin. A possible consequence is a Palestinian retreat from the understandings reached in previous rounds of negotiations under the Barak and Olmert administrations regarding Israeli sovereignty over Jewish neighborhoods in East Jerusalem as part of a final status agreement in accordance with the Clinton parameters.

The Sheikh Jarrah affair reinforces the tendency among members of the international community to link the controversy over Jewish settlement in this neighborhood with the controversy over construction in Jewish neighborhoods beyond the Green Line and the question of sovereignty over the Holy Basin of Jerusalem. **In addition, these settlement activities have the potential to cause the international community to question Israel's ability to control and manage sensitive parts of the city – with its vast variety of religious and other communal interests – in a fair and sensitive manner.** The issue of Sheikh Jarrah, therefore, has the potential to undermine Israeli political interests with respect to East Jerusalem.

5. *Adding a focal point of tension in Jerusalem*

Jewish settlement in Sheikh Jarrah in conjunction with the eviction of Palestinians **adds an additional layer of tension** with respect to security and inter-communal relations in East Jerusalem, creates a source of friction and tension within Israel (regular Friday demonstrations), and adds to the burdens of police and security forces. The existence of an additional focal point of conflict and violence in Jerusalem reinforces the negative image of the city.

Options for Government Action

Jewish settlement in the heart of Arab neighborhoods has significant implications for Israel's vital interests. This complex reality cannot be left to the care and judgment of private entities. Despite the legal context of an issue involving property rights, the government has the legal and administrative tools to take action in accordance with the interests of the State of Israel. Experience demonstrates that the government had even taken such measures in the past in order to prevent

private property proceedings from establishing facts on the ground where the government thought they might undermine Israeli interests.

The main options for government action are the following:

1. Expropriation of property (“Acquisition for Public Purposes” under the law) from owners, and their compensation, in order to allow the government to apply its own judgment with respect to the use of the property;
2. Prevention of the settlement of Jews (and eviction of Palestinians for this purpose) in properties within the heart of Arab neighborhoods in East Jerusalem – as recommended by past attorney generals of Israel – on the grounds of endangerment of public safety and disruption of public order;
3. Amendment of the 1970 Legal and Administrative Matters (Regulation) Law [Consolidated Version] to grant the Custodian General discretion regarding the release of property in the future;
4. Action to halt Jewish housing plans in Arab neighborhoods;
5. Re-examination of the aid and assistance provided by government authorities to settlement activities within Arab neighborhoods.

We recommend that the government consider formulating a clear policy regarding Jewish settlement in the heart of Arab neighborhoods in East Jerusalem, taking into account the implications of settlement in the neighborhood of Sheikh Jarrah for the interests of the State of Israel, as detailed in this paper, and that the government consider the options for action available to it.

Introduction

Jewish settlement in the neighborhood of Sheikh Jarrah entails, among other things, the eviction of refugee Palestinian families and represents a growing trend of Jewish settlement in the heart of Arab neighborhoods in East Jerusalem that makes use of legal proceedings regarding the private property rights of Jews. There have in the past been a few precedents establishing Jewish property rights in Arab neighborhoods, but the case of Sheikh Jarrah involves an attempt to vacate two compounds in which dozens of Palestinian families reside.¹ The forceful eviction of tenants by the police and the evacuees' suffering have received widespread global media attention and inspired empathy towards the tenants as well as opposition, including protests by Israelis, to Israel's actions.

The neighborhood of Sheikh Jarrah on the one hand reflects a broader and growing trend and on the other hand embodies unique legal and historical characteristics.

This paper aims to explore the principle questions arising from settlement in Arab neighborhoods in East Jerusalem and the strategic implications of these questions, to examine the ramifications of the reclaiming of Jewish property and ownership rights in the heart of Arab neighborhoods for the vital interests of the State of Israel, and to present the possibilities available to the government for addressing this issue.

The first part of this paper presents the historical, political, and legal background of the issue from the following angles: the histories of the neighborhoods of

¹ There have been cases in the past of actualization of Jewish ownership rights in the Muslim Quarter, in Silwan, and in Ras al-Amud. See, for example, the case in Silwan in which the organization EL'AD sought to settle in the Ghuzlan family home, which was built on land that before 1948 had belonged to PIKA, a Jewish settlers' group founded by Baron Rothschild. N. Shragai, "Cracks in the Glass House," *Haaretz*, 27.7.1998 (Hebrew). Regarding settlement attempts in Ras al-Amud, based on claims to Jewish property that had been purchased in 1887 by "Kollel Habad" and "Kollel Wahlin," see S. Berkovitz, *The Wars of the Holy Places* (Jerusalem: Hed Artzi and Jerusalem Institute for Israeli Studies, 2000), 193 (Hebrew).

In other cases Jewish settlement was based on the purchase of houses directly or through straw men or on the determination that a property is "Absentee Property."

Sheikh Jarrah and Shimon HaTzadik; use of the historical and sacred symbolism of the place; the geopolitical importance of the neighborhood; proprietary and legal matters that led to the eviction of Palestinian families from their homes; legal aspects of properties located in East and West Jerusalem; and Jewish settlement in the heart of Arab neighborhoods in East Jerusalem.

The second part of this document addresses the strategic implications of the Sheikh Jarrah affair, including: the opening of the “1948 Files” regarding restitution of Palestinian properties in West Jerusalem and Israel; restricting the government’s freedom of action during negotiations; contributing to the de-legitimization of Israel and to its negative image throughout the world; undermining Israel’s diplomatic achievements on the issue of Jerusalem; and creating social and security-related tension. We shall conclude with a presentation of the possibilities for action available to the government.

Part A – Historical, Political, and Legal Background

1. The Histories of Sheikh Jarrah and Shimon HaTzadik

The Arab neighborhood of Sheikh Jarrah was originally a village named after Hussam al-Din al-Jarrahi, the personal physician of Saladin, the Muslim military leader whose army liberated Jerusalem from the Crusaders in the 12th century.² He earned the title “Jarrah” (جراح), which means healer/surgeon in Arabic, and was buried at the entrance to the village. A *zawiya* – a sufi monument of worship – was constructed at the burial site and it became a destination for worshippers and visitors.

In a book published in the late 15th century, the Jerusalem historian and judge Mujir A-Din wrote about the site and termed it *zawiyat al-jarrahiyya*, claiming that the tombs of additional holy warrior are located nearby.³ In the late 19th century, a mosque with a minaret was constructed there.⁴ In the final third of the 19th century, members the Muslim population began moving outside of the Old City walls and the affluent and respected Muslim families of Jerusalem constructed buildings that became the core of the neighborhood of “Sheikh

² Z. Vilnay, *Vilnay Encyclopedia of Jerusalem*, Vol. 2 (Jerusalem: Achiever Publishing, 1993), 1152-1153 (Hebrew); B. Spafford Vester, *Our Jerusalem* (Kfar Saba: Ariel, 1992), 76 (Hebrew).

³ American geographer Edward Robinson wrote about the place in 1838 and said that an inn with stables was located near the tomb. The place appears in the Van de Wilde map in 1858 and Dr. Neumann (1877) also mentions it as the burial place of a Muslim holy man.

See Z. Vilnay, *Vilnay Encyclopedia of Jerusalem*, Vol. 2 (Jerusalem: Achiever Publishing, 1993), 1152-1153 (Hebrew); Y. Ben-Arieh, *A City in the Reflection of an Era: Jerusalem in the Nineteenth Century* (Jerusalem: Yad Yitzhak Ben-Zvi, 1977), 85 (Hebrew); R. Kark and S. Landman, “The Establishment of Muslim Neighborhoods in Jerusalem Outside the Old City During the Late Ottoman Period,” in E. Shaltiel, (ed.) *Jerusalem in the Modern Period* (Jerusalem: Yad Yitzhak Ben-Zvi and Ministry of Defence Publications, 1981), 175 (Hebrew).

⁴ Ben-Arieh, p. 85; D. Kroyanker, *Jerusalem Architecture: Arab Construction Outside the Old City Walls* (Jerusalem: Keter Publishing, 1991), 183 (Hebrew).

Jarrahd.” According to the 1905 Ottoman census, 167 Muslim families lived in the “Sheikh Jarrah” quarter.⁵

The first building in the neighborhood was Qasr al-Mufti, which has appeared on maps since the 1840s and served as the summer residence of the Husayni family. At the end of the 19th century, the building was renovated by Sheikh Tahir al-Husayni, the Hanafi mufti of Jerusalem at the time, who turned it into a grand villa.⁶ His son, [Hajj] Amin al-Husayni, who served during the time of the British Mandate as the “Grand Mufti” – the leader of the Arab residents of Palestine, president of the Supreme Muslim Council, and chairman of the Supreme Arab Committee – grew up in this house as well.⁷

Haj Rashid Al-Nashashibi, the son of a rival family to the Al-Husayni family, also built a grand home in the area, and following him, additional members of the Nashashibi family and later the Jara’llah and other families constructed homes there as well.⁸ Two additional grand and important buildings that were constructed in the neighborhood during those years were the villa of Rabbah Effendi al-Husayni, which was purchased after his death by members of the American Colony and today serves as the American Colony Hotel, and the villa of Ismail Bey al-Husayni, which received the title “Orient House” and served during the 1980s and the 1990s as a center of activities for the Palestine Liberation Organization (PLO) in East Jerusalem (and today serves as an office of the World Health Organization, (WHO)).⁹

⁵ Kark and Landman, “The Establishment of Muslim Neighborhoods,” 205. The Sheikh Jarrah quarter included the “Hussayni” neighborhood (a compound south of the Sheikh Jarrah mosque that is today considered part of the neighborhood of Sheikh Jarrah) and the neighborhoods of Wadi al-Joz and Bab al-Sahiarah.

⁶ Kark and Landman, “The Establishment of Muslim Neighborhoods,” 182, 191-194; D. Kroyanker, *Jerusalem Architecture*, 68.

⁷ I. Pappe, *Aristocracy of the Land: The Husayni Family* (Jerusalem: Bialik Institute, 2002), 125 (Hebrew).

⁸ Additional families include Al-‘Araf, Al-Khatib, Murad, Dajani, and Hindiyeh. Ben-Arieh, 476-477; Kroyanker, 159; Kark and Landman, 191-192; S. Tamari, *Jerusalem 1948* (Jerusalem: Institute of Jerusalem Studies and Badil, Resource Center, 1999), 55.

⁹ Kark and Landman, 200-201. Regarding the villa of Ismail Bey Al-Husayni, see Kroyanker, *Jerusalem Architecture*, 177-178. According to Kroyanker, a reception for Kaiser Wilhelm took place at this villa during his visit to Jerusalem in 1898, and in 1952 it was turned into one of the few hotels in East Jerusalem. Regarding the villa of Rabbah Effendi Al-Husayni, see Kroyanker, *Jerusalem Architecture*, 177-182. Kroyanker

Although Sheikh Jarrah developed during the 19th century as a neighborhood external to the Old City of Jerusalem, it earned an important status in terms of Palestinian national heritage because members of eminent and respected Palestinian families resided there during the time of the Mandate, as did individuals such as the mufti Amin Al-Husayni, Jerusalem Mayor Raghib al-Nashashibi, the historian George Antonius, and the writer Is’af al-Nashashibi, who are first-order symbols of Palestinian identity.¹⁰

During the final third of the 19th century, a Jewish residential neighborhood was constructed surrounding a holy Jewish site that is traditionally considered to be the tomb of Shimon HaTzadik. Shimon HaTzadik was a high priest who had lived in Jerusalem during the Hellenic period of the Second Temple and was one of the sages of Knesset HaGdola (the highest council of Jewish sages during the Second Temple period).¹¹ He is mentioned in the Talmud as someone who welcomed Alexander the Great upon his arrival in the Land of Israel in the fourth century BCE. The Mishna attributes the saying, “The world rests upon three things: Torah, service (to God), and good deeds” to him.¹² Next to the tomb is the Small Cave of Sanhedrin, where, according to tradition, members of the Small Sanhedrin (a judicial body of the Second Temple) that operated in Jerusalem are buried.¹³ The first mention of this site can be found in the testimony of Rabbi

claims that the building was constructed in 1865-1876 and sold to the American family of Spafford in 1881. The Rabbah Effendi villa also appears in the memoirs of Serene Al-Husseini Shahid. See S. Al-Husseini Shahid, *Jerusalemite* (Tel Aviv: Andalus, 2006) 14-15 (Hebrew). See Annexes 13 and 16. See also R. Kark and M. Oren-Nordheim, *Jerusalem and its Environs : Quarters, Neighborhoods, Villages, 1800-1948* (Jerusalem: Hebrew University Magnes Press, 2001), 123.

¹⁰ Kark and Oren-Nordheim, 121. D. Rubinstein, “The Forgotten Aristocracy,” ‘Etmol, Issue 187, May 2006 (Hebrew). Kark and Landman claim that as the neighborhood developed, once could distinguish between its northeastern part, which was more prestigious, and its western part, where the houses were smaller; see Kark and Landman, 191-192. Regarding Nashashibi’s house in Sheikh Jarrah, see N. E. Nashashibi, *Jerusalem’s Other Voice* (Exeter : Ithaca Press, 1990), 15. Regarding ‘Isaaf Nashashibi and his home, see Kroyanker, 297 and Annex 14.

¹¹ Vilnay, 1168. See Annex 8.

¹² Vilnay, 1168-1169; R. Peled and A. Friedlin, “Lag Ba’Omer is Not Just Har Meron,” *Ynet*, 11.5.2009, <http://www.ynet.co.il/articles/0,7340,L-3709667,00.html> (Hebrew).

¹³ Peled and Friedlin, “Lag Ba’Omer is Not Just Har Meron.” See also Y. Cohen, *Gershon the Wise from Nahalat Shimon* (Jerusalem: Reuven Mas, 1968), 30 (Hebrew). See Annex 9.

Yaakov HaShaliach, who visited Jerusalem in 1235. The Karaite Shmuel Ben-David, who visited the city in 1641, also tells of his visit to this burial cave.¹⁴

Testimonies from the 19th century (during the time of the Ottoman Empire) reveal that the tomb was a pilgrimage destination, particularly for Jews from eastern communities. Popular, well-attended celebrations would take place annually on the holiday of Lag Ba’Omer, simultaneous to the celebrations that took place at the tomb of Rabbi Shimon Bar-Yohai on Mount Meron.¹⁵ In his book “Gershon the Wise from Nahalat Shimon,” Yona Cohen wrote that the residents of Jerusalem envied the residents of Safed because of the massive gatherings at Mount Meron and therefore set Lag Ba’Omer as the day on which they would worship at the tomb of Shimon HaTzadik.¹⁶

The celebrations at the tomb of Shimon HaTzadik included candle lighting, dancing, prayers, haircuts for children, and monetary donations determined by the weight of the hair that was trimmed.¹⁷ This sacred Jewish site was under Arab ownership until 1876.¹⁸ According to testimonies, the annual festivity that took place on Lag Ba’Omer was a massive celebration in which the entire city participated, including Christians and Muslims. William Lynch, who visited Jerusalem in the mid-19th century, wrote that the local celebrations were a “very impressive sight” and mentioned the participation of “many Turks and Christians” as well as foreign consuls. Pinhas Grayevsky, who wrote about the life of the old Jewish settlement in Jerusalem, notes in his book that Muslims would come every year to watch the Jews’ festivities and that “the wives of the Ishmaelites would also come and stake a permanent place on the hill facing the square.”¹⁹

¹⁴ Vilnay, 1170. Peled and Friedlin, “Lag Ba’Omer is Not Just Har Meron.”

¹⁵ Ben-Arieh, 39-41. Vilnay, 1170-1172.

¹⁶ Cohen, *Gershon the Wise from Nahalat Shimon*, 35. Pinhas Grayevsky also claimed that those who could not travel to Safed or Tiberias on Lag Ba’Omer were satisfied with a visit to the tomb of Shimon HaTzadik. See Ben-Arieh, 41. On this matter, see also Y. Paz, “Jewish Retreat in Jerusalem During the Mandate: The Neighborhoods of Shimon HaTzadik and Kfar HaShiloah” in *Eretz Israel: Studies of the Land and Its Antiquities*, Vol. 28 (2007-08), 427, 440 (note 11) (Hebrew).

¹⁷ Ben Arieh, 39-41. Vilnay, 1170-1171.

¹⁸ Vilnay, 1171. Ben-Arieh, 41.

¹⁹ Ben-Arieh, 39, 41. P. Ben Tzvi Grayevsky, *The Book of the Yishuv* (Jerusalem: Solomon Press, 1938-39) 36 (Hebrew).

The site of Shimon HaTzadik's tomb was recognized as Jewish territory during the Ottoman era, and the Arabs termed in "Al-Yahudiyyah" (the Jewish [place]).²⁰ The site was Arab-owned throughout these years and testimonies from the 19th century indicated that Jews who visited the site received a key to the cave from the "Ishmaelite" owner for which they were required to pay a symbolic entrance fee, defined as "payment for damages" because of the harm that visitors caused to the trees and vegetation that grew in the field near the tomb.²¹ In 1876 the heads of the "Sephardic Community Council" and the heads of the Ashkenazi "General Council of the Congregation of Israel" united and, for 16,000 francs, jointly purchased the cave of Shimon HaTzadik and the cave of the Small Sanhedrin, as well as 17.5 dunam (one dunam is about ¼ of an acre) located nearby.²² According to the contract signed between the trusts following this purchase, it was agreed to divide the territory between the two Jewish communities (not by parceling and registering ownership but as an internal arrangement) with the exception of the caves, which were defined as joint property. The entire property was registered with the Ottoman authorities in the name of Rabbi Avraham Ashkenazi (who

²⁰ Vilnay, 1172. Y. Ben-Porat et al. (eds.) *Annals in the History of the Jewish Yishuv* (Jerusalem: Yad Izhak Ben-Zvi, 1975-76) 224 (Hebrew).

²¹ Ben-Arieh, 41. 253 *Halevanon*, 5 (21) of June 25, 1868, 332-333 (Hebrew); *Hamagid* 11(38) of September 25, 1867, 300 (Hebrew). Vilnay, 1171. Ben-Porat et al., 224. Paz, "Jewish Retreat in Jerusalem During the Mandate: The Neighborhoods of Shimon HaTzadik and Kfar HaShiloah," 427.

²² Ben-Porat et al. (eds.) *Annals in the History of the Jewish Yishuv*, 224-226. Vilnay, *Vilnay Encyclopedia of Jerusalem*, Vol. 2, 1171. Ben-Arieh, 41, 253. Cohen, *Gershon the Wise*, 31. According to Ben-Porat and others, the amount was 15,000 francs. According to Ben-Arieh, it was 16,000 francs. Yona Cohen's book claims that the amount was 17,000. See also Peled and Friedlin, "Lag Ba'Omer is Not Just Har Meron".

There are various claims regarding the size of the territory purchased: Ya'ir Paz estimates that it was 19,268 square meters; see Paz, "Jewish Retreat in Jerusalem During the Mandate: The Neighborhoods of Shimon HaTzadik and Kfar HaShiloah," 427. *Halevanon*, 12 (28) of February 23, 1876, 222-223. For the Ottoman purchase deed see Amnon Cohen et al., *Jews in the Muslim Court: Society, Economy and Communal Organization in Ottoman Jerusalem – The 19th Century* (Jerusalem, 2003), 50-53 (Hebrew); Shmuel Shamir, in an article about the property of the Sephardic community (Bamaarekhet, August 1968, Hebrew), and A. Yaari, in *Shluhi Eretz Israel*, enlarged on the history of the purchase.

had been born in Turkey), representative of the Sephardic Jews, and Rabbi Meir Auerbach, representative of the Ashkenazi Jews.²³

In 1890 the cornerstone was laid for the construction of the neighborhood of “Shimon HaTzadik” in the portion belonging to the Sephardic community, east of Nablus Road and adjacent to the tomb. The neighborhood was built at the initiative of the Sephardic community leaders and was intended for the poor of the community and for religious scholars, and it was characterized by modest closely constructed houses built on the slopes of the hill.²⁴ In 1916, 45 individuals lived in the neighborhood in 13 households.²⁵ The Ashkenazi portion of the property south of the tomb remained open space, and during the time of Jordanian control (in 1956), 28 housing units for Palestinian refugees were constructed there.

²³ Ben-Porat et al. (eds.) 224. Israel Dov Frumkin, one of the pioneers of the Hebrew press and editor of “Havatzelet,” harshly criticized the decision to purchase the land and wrote in 1875, “Terrible hunger and poverty will afflict the residents of our city, the destruction will devour all that remains and the gifts of charity ... Is this the time to expend money on new houses of worship? To buy fields and vineyards, gardens and orchards and a plot of land on which, according to legend, one of the forefathers is buried? Did the representatives of the kollels of our city do right when they bought the piece of land with the tomb of Shimon HaTzadik outside of the city for 800 lira of the charitable funds they hold and which were borrowed from the kollel in order to send a representative to America to collect donations?... No! Not at this terrible time.” See Cohen, *Gershon the Wise*, 31. Ben-Arieh, 255.

The partition agreement is available at Grayevsky, *The Book of the Yishuv*, 38. Under the agreement, the two sides hired the services of the “expert engineer Mr. Shik,” who drafted a plan for partition of the area, and the two sides then drew lots to determine which side would receive which part.

²⁴ Paz, “Jewish Retreat in Jerusalem During the Mandate: The Neighborhoods of Shimon HaTzadik and Kfar HaShiloah,” 430. D. Goren, “The Parcel of Land Belonging to Shimon HaTzadik,” *Makor Rishon*, 8.9.2010, 38 (Hebrew). Vilnay, p. 1172. Cohen, *Gershon the Wise from Nahalat Shimon*, 34.

²⁵ B. Kluger, *Jerusalem, Surrounded by Neighborhoods* (Jerusalem: Benjamin Kluger, 1978-79), 9. In 1938, during the “riots”/“Arab revolt,” the neighborhood was temporarily abandoned. It was re-inhabited in 1940. According to Ya’ir Paz, during the 1940s the neighborhood was in a sad state and suffering from neglect, with the younger generation having left and the neighborhood’s apartments inhabited only by elderly residents. See Paz, “Jewish Retreat in Jerusalem,” 430.

The Ashkenazi community leaders wanted to build a similar neighborhood in its territory and towards this end established a construction company, but the neighborhood was eventually built near Jaffa Road and the compound remained vacant. See Goren, “Parcel of Land,” 39; Paz, “Jewish Retreat in Jerusalem,” 430.

In 1891 construction also began to the west of Nablus Road and the tomb of Shimon HaTzadik (a compound known today as “Umm Haroun”) on the neighborhood of “Nahalat Shimon,” which was initiated by a private company. The property purchased by this company was parceled and sold to individuals.²⁶ Residents of the neighborhood belonged to three communities – Yemenite, Halabi, and Georgian – and were of a low socio-economic status.²⁷ In 1916, 93 families, comprising 259 individuals, lived in this neighborhood, which had four synagogues.²⁸ A report of the Jewish Agency from 1938 described difficult physical conditions within the neighborhood, including poverty and crowdedness, and termed some of the homes “unfit for human habitation.”²⁹

In 1918 the Zionist Delegates’ Committee (Va’ad HaTsirim), headed by Chaim Weizmann, funded the renovation of the cave, the tomb and its environs. The name of the Zionist organization was engraved on a plaque at the entrance to the Small Sanhedrin cave, underscoring its Jewish-Zionist symbolic importance.³⁰ The place has also been inscribed in Israeli consciousness as a result of the Arab

²⁶ Goren, “Parcel of Land,” 39. Tzvi Grayevsky, *Book of the Yishuv*, 35.

²⁷ Paz, “Jewish Retreat in Jerusalem,” 431. Cohen, *Gershon the Wise from Nahalat Shimon*, 33. Peled and Friedlin, “Lag Ba’Omer is Not Just Har Meron.” Vilnay, 1172-1173.

Interestingly, Yona Cohen’s book – about the life story of Gershon the Wise and his son in the neighborhood of Nahalat Shimon from its establishment until its evacuation in 1948 – describes good relations between the residents of Nahalat Shimon and the Arabs of Sheikh Jarrah and tells of meetings and conversations that took place (in Arabic) between Gershon the Wise and Mufti Haj Amin Al-Husayni as his guest. According to Cohen, the two spoke among other things about the “new Jews.” The mufti spoke bitterly about them and criticized them for not even speaking “the language of this land – Arabic” and Gershon the Wise also expressed criticism of the Jewish leaders who speak condescendingly to Arabs and rely too heavily on money to buy lands and on the support of nations “that want to be rid of the Jews” and who are dismissive of the need to speak with and influence their Arab neighbors in order to allay their concerns. See Cohen, *Gershon the Wise*, 24-25, 100-101.

²⁸ Goren, “Parcel of Land.” Paz, “Jewish Retreat in Jerusalem,” 431, 441. Kluger, *Jerusalem, Surrounded by Neighborhoods*, 9.

²⁹ Paz, “Jewish Retreat in Jerusalem,” 431.

³⁰ Vilnay, 1169. Paz, “Jewish Retreat in Jerusalem,” 430. Yona Cohen wrote in his book about Nahalat Shimon that “there was great joy among Jerusalem Jews when they learned that the ‘Zionists’ want to help maintain the holy place of the cave of the tomb of Shimon HaTzadik.” See Cohen, *Gershon the Wise from Nahalat Shimon*, 34.

attack of April 1948 against a convoy to Mount Scopus, which resulted in the deaths of 78 employees of the Hebrew University and “Hadassah” Hospital (an Arab response to what was described as the “Deir Yassin massacre”).³¹ In 1967, following the Six Day War, a monument in memory of the fallen was constructed in Sheikh Jarrah.

2. The Use of Symbols of Heritage and Holiness

In the Israeli-Palestinian conflict, holy sites operate as symbols of identity for local and external recruitment in support of the struggle between the two national movements. They serve as a magnet for population settlement and presence and as a sacred value for which members of the religion and nationality are willing to fight. An example may be found in the struggle that developed during the years 1999-2008 surrounding a cave near the tomb of Shimon HaTzadik, which some call the Cave of the Ramban (Nachmanides).³² In 1999, with the start of the Jewish settlement near the tomb of Shimon HaTzadik, Knesset Member Benyamin Elon (Ha’Ichud HaLeumi) led an action aimed at taking control of the field next to the tomb of Shimon HaTzadik. The property is maintained by a Palestinian family that administers it as part of a family charitable endowment – Waqf Abu Jibna. Much doubt has been cast on the identification of a cave called *Magharat al-Nuqta* by the Palestinians as the same cave where Rabbi Moshe Ben Nachman (the Ramban) apparently resided in the 13th century. A small group of Breslev Hasidim regularly prayed at the place during the British Mandate and after 1967.³² In 2000 the Palestinian family that manages the cave built a fence around the space, after which a number of Jews went to Court to demand that the cave and the surrounding territory be recognized as a Jewish holy site. In 2000 then-Minister of Religious Affairs Yitzhak Cohen of the political party Shas indeed declared the site a holy place under the Protection of Holy Places Law of 1967. Following a petition by the Palestinian family to the High Court of Justice opposing this declaration, then-Minister of Justice and Minister of Religious Affairs Yossi

³¹ See I. Radai, *A Tale of Two Cities: The Palestinian-Arab Society, Institutions, and Fighters in Jerusalem and Jaffa, 1947-1948* (Jerusalem: Hebrew University, 2009) 139-141 (Hebrew). See Annex 18.

³² Haaretz, October 16, 1998, a5; October 20, a5; April 28, 1999, a6; April 24, 2002, a1,a6; September 29, 2003, b3. See Annex 18.

Beilin established a committee of experts headed by Dr. Shmuel Berkovitz. This committee found that the site known as the “cave of the Ramban” is a “low level” holy place for Jews, but the Advisor on Jewish Law at the Ministry of Justice, Dr. Michael Vigoda, wrote an opposing legal opinion, which later served as the basis for overruling that decision issuing a ruling that approved Palestinian ownership over this site.³³ The “cave of the Ramban” case is an example of the inherent link between political processes and the sacred geography – the need to imbue territory in dispute with value-based significance. Benyamin Elon and others’ sanctification of the place was intended to support takeover of additional territory for the purposes of settlement. In this way, sacredness is used for the abovementioned objectives.

The designation of holy places, as well as structures with historical significance that are linked to the conflict and to the national trauma associated with Sheikh Jarrah, creates national symbols for recruitment in the struggle for control and settlement of the place. For example, Yehonatan Yosef, spokesman for the neighborhood of “Shimon HaTzadik,” characterized Jewish settlement in Sheikh Jarrah as a matter of “historical justice … when the place where 78 casualties of the Hadassah convoy were murdered is settled by Jews.”³⁴ The rhetoric that accompanied the plan to establish a Jewish neighborhood in the area of the nearby Shepherd Hotel also made use of the fact that the neighborhood was to be built on the ruins of a building that had belonged to mufti Hajj Amin al-Husayni.³⁵ Al-Husayni initiated construction of the building in the 1920s. Later the historian

³³ See Michael Wygoda, “The third kind of holy places: The case of Nachmanides’ Cave in Jerusalem”, in Marshall J. Breger, Yitzhak Reiter and Leonard Hammer (eds.), *Confrontation and Co-existence in Holy Places: Religious, Political and Legal Aspects in the Israeli-Palestinian Context* (London and New York: Routledge, 2009), 93-104; D. Rubinstein “Ministry of Religious Affairs Reverses Stance. Ramban Cave No Longer Holy,” *Haaretz*, 29.9.2003 (Hebrew). High Court of Justice Ruling 4238/00 Mutawalli of Abu Jibna et al. vs. The Minister of Religious Affairs et al., Supreme Court (Hebrew). A. Litman, “Petition to the High Court of Justice: Ramban Cave Is No Longer Holy,” *Ynet*, 13.6.2000 (Hebrew). <http://www.ynet.co.il/articles/0,7340,L-17554,00.htm>.

³⁴ Y. Yosef, “In Sheikh Jarrah the Left Is Fully Exposed,” *NRG*, 11.3.2010 (Hebrew). See <http://www.nrg.co.il/online/1/ART2/042/562.html>.

³⁵ Examples: Y. Yosef, “In Sheikh Jarrah the Left Is Fully Exposed,” *NRG*, 11.3.2010, <http://www.nrg.co.il/online/1/ART2/042/562.html> (Hebrew). N. Shragai, “To Hell with the Facts,” *Israel Today*, 25.3.2010, http://www.israelhayom.co.il/site/newsletter_opinion.php?id=3403 (Hebrew).

George Antonius and his wife Katy resided there, and later still it was transformed into the Shepherd Hotel. In 1985 the hotel was bought by the Jewish American millionaire Irving Moskovitch for the purpose of Jewish settlement in the place.³⁶ In July 2009, following the international criticism of planned construction there, Foreign Minister Avigdor Lieberman instructed his ministry's representatives throughout the world to use the photograph of the mufti during his meeting with Hitler in 1941 as part of the public relations efforts on this issue.³⁷

3. The Geopolitical Significance of the Neighborhood

Sheikh Jarrah has both municipal and international importance.³⁸ It is located near the Kidron River rise and on the route from the Old City northwards as well as the route to Mount Scopus. Sheikh Jarrah links the Arab neighborhoods in the center of eastern and southern Jerusalem with the Arab neighborhoods throughout the northern part of the city. A number of consulates and diplomatic representatives are located in Sheikh Jarrah and nearby, including those of Britain, Turkey, Belgium, Spain, France, Italy, and Sweden, as well as offices of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the World Health Organization (WHO), the European Union, the organization UNAIS, and the Red Cross. The neighborhood also hosts a branch of the Young Women's Christian Association (YWCA), offices of foreign grant-making foundations (The Friedrich Ebert Stiftung, The Friedrich Naumann Stiftung (FNST), and the Belgian agency Belgian Technical Cooperation (BTC)), and the Center for the Defence of the Individual (HaMoked), a human rights organization. The well-known American Colony Hotel is situated in the center of the neighborhood, next

³⁶ See N. Hasson, "A Time of Grace for the Shepherd Hotel in Sheikh Jarrah, East Jerusalem," *Haaretz* 3.9.2009 (Hebrew). Pappe, *Aristocracy of the Land*, 360. Y. Marcus, "5 Comments on the Situation," *Haaretz*, 24.7.2009 (Hebrew). See Annex 15.

³⁷ D. Macintyre, "Israel uses Hitler picture to sell its settlement expansion," *The Independent*, 25.7.2009 <http://license.icopyright.net/user/viewFreeUse.act?fuid=ODk4NTQwOQ%3D%3D>

"Israel to use Hitler shot for PR," *BBC News*, 22.7.2009: <http://news.bbc.co.uk/2/hi/8162841.stm>

³⁸ The neighborhood is not clearly delineated and is considered by some to include parts that border with Wadi Joz and the neighborhood of Al-Sahira (the Flowers Gate / Herod's Gate to the Old City).

to the Sheikh Jarrah Mosque. A number of additional hotels are located within this neighborhood as well. Sheikh Jarrah also hosts Palestinian educational and cultural institutions such as the “Hind Al-Husayni” Girls’ School of Al-Quds University, a cultural center named after Muhammad Is’af al-Nashashibi (دار الطفل العربي, in English :the home of the Arab child), and various schools.³⁹ The Palestinian theater Al-Hakawati is also nearby, as is “Orient House,” in which the “Center for Arab Studies,” once headed by Faisal al-Husayni, operated.

After 1967 Israeli government institutions, including the national headquarters of the Israel police and a government compound, were built alongside the neighborhood. The girls’ high school Al-Ma’muniyah was built in the plot of land that had belonged to the mufti, but it was never opened and the building was transferred to the Israeli Ministry of Interior. A large medical center was established nearby to serve Palestinian patients.

4. Proprietary and Legal Issues Behind the Displacement of Palestinian Families

As mentioned, in 1876 the heads of two charitable trusts the Sephardic Community Council and the Ashkenazi General Council of the Congregation of Israel purchased the cave of Shimon HaTzadik, the Small Cave of Sanhedrin, and an area of 17.5 dunam nearby. A few dozen Jewish families then settled in the two neighborhoods that were built in this area.⁴⁰

During the 1948 War, the residents of the Jewish neighborhoods of “Shimon HaTzadik” and “Nahalat Shimon” were evacuated from their homes. Representatives of the “Hagana” and, later, the British authorities requested the residents to leave their homes immediately because of the violence and the Jordanian Legion’s

³⁹ For information about Dar al-Tifl, see <http://dartifl.org/web>.

⁴⁰ See Section A-1. Ya’ir Paz wrote about another neighborhood that existed in the area for a short time. Its name was “Nahalat Yitzhak” and it was located between Nahalat Shimon and “Beit Israel HaHadasha” [the New House of Israel]. Nahalat Yitzhak developed during the 1930s and was abandoned in late 1947-early 1948. See Paz, “Jewish Retreat in Jerusalem,” 432-435.

entrance into the eastern part of Jerusalem.⁴¹ After 1948, the area came under Jordanian control and the management of the Jordanian Custodian of Enemy Property.⁴² Most of the houses remained intact, and Palestinian refugees settled in them.⁴³

In 1956, in the context of a cooperative project between the government of Jordan and UNRWA, 28 Palestinian refugee families were housed in a residential compound (26 dual-family houses and two single-family houses) that had been constructed in the neighborhood to the east of Nablus Road and south of the cave of Shimon HaTzadik (named the Karam al-Ja’uni” Compound). In exchange, the residents were required to relinquish their refugee ration cards, that is, their right to receive material assistance from relief and works agencies of the United Nations and the Jordanian government. This did not, however, change the Palestinian residents’ status as refugees according to the UNRWA criteria or their demand for return of or monetary compensation for the property they abandoned in Israel. The rental lease that the Arab residents of the compound signed with the government of Jordan stated that the agreement does not in any way affect their rights in their country of origin, and if they return to their original homes they will be required to return the property in this neighborhood to the government of Jordan (see the annexed agreement).⁴⁴ Each apartment was 60 square meters in size, on a yard of 350 square meters in size. Every family that entered the compound was required to pay symbolic rental fees to the Jordanian Ministry of Economy and Development in the sum of one Jordanian dinar per year.⁴⁵ The agreement stated that after three years and three months have passed,

⁴¹ Regarding the abandonment of neighborhoods, see A. Golan, *Spatial Change—The Result of War* (Beer-Sheva: Ben-Gurion University Press, 2001), 21-27. Regarding the evacuation of Nahalat Shimon see also Cohen, *Gershon the Wise from Nahalat Shimon*, 113.

⁴² Regarding the Jordanian management of this matter between 1948 and 1967, see E. Zamir and E. Benvenisti, *The Legal Status of Lands Acquired by Israelis before 1948 in the West Bank, Gaza Strip and East Jerusalem* (Jerusalem: The Jerusalem Institute for Israel Studies, 1993) 35-57.

⁴³ Paz, “Jewish Retreat in Jerusalem,” 442.

⁴⁴ Articles 9 and 12 of the Rental Agreement between the tenants and Jordan. See Annex 7.

⁴⁵ According to the agreement between Jordan and UNRWA. See Annex 5. We would like to express our gratitude to Attorney Hatem Abu-Ahmad for providing us with a copy of this agreement. The families claim that they were promised that after three years

the residents may renew the lease, under the same conditions, for an additional 30 years, after which they could renew it for another 33 years.⁴⁶

Following the Six Day War and the implementation of Israeli law, jurisdiction, and administration in East Jerusalem, the properties that had been managed by the “Jordanian Custodian of Enemy Property,” which included lands in this area, were transferred to the Custodian General within the Ministry of Justice in accordance with the 1970 Legal and Administrative Matters (Regulation) Law [Consolidated Version].⁴⁷ The Sephardic Community Council and the General Council of the Congregation of Israel then initiated legal proceedings for the release of the properties to them and registration of the properties in their names.⁴⁸ These proceedings concluded in September 1972 and ownership of the properties was transferred within the Land Registry. According to the attorney representing the families who live there, the registration took place without any announcement, without notification to the families, and in an improper manner.⁴⁹

In 1982 the two Jewish trusts brought suit against 23 families that resided in the neighborhood of Shimon HaTzadik alongside and to the south of the cave of Shimon HaTzadik and demanded their removal from 17 apartments within

of residence they would receive legal title to the homes and that this promise was not kept. We do not have the means to verify or refute this claim. See their claim in the booklet: Civic Coalition for Defending Palestinian Rights in Jerusalem, *Dispossession and Eviction in Jerusalem* (Jerusalem: The Civic Coalition for Defending Palestinian Rights in Jerusalem, 2009).

⁴⁶ Article 3 II in the agreement between Jordan and UNRWA on a municipal residential project in Sheikh Jarrah.

⁴⁷ Article A.5 of the 1970 Legal and Administrative Matters (Regulation) Law [Consolidated Version], *Book of Laws*, 1970, 138.

⁴⁸ High Court of Justice Ruling 6358/08 Muhammad Kamel al-Kurd et al. vs. the Land Registry and Regulation Unit et al.; [Civil Appeals Authority - Civil Appeal 6239/08 Muhammad Kamal Alqurd vs. the Sephardic Community Council, Supreme Court, TAKDIN-ELYON 2008 (3) 573 (Hebrew). Civil Appeal 4126/05 Sulayman Darwish Hajazi vs. the Sephardic Community Council et al. TAKDIN-ELYON 2006 (2) 4042 (Hebrew). One of the Palestinian tenants' appeals claimed that the Land Registry registered ownership of the place without proper examination of the documents.

⁴⁹ Interview with Attorney Hatem Abu Ahmad, July 2010. The claim was of reliance on a document that did not define a geographic area and did not include a map.

the compound.⁵⁰ The Palestinian families' attorney at the time, Yitzhak Tussia-Cohen, reached a negotiated agreement (an agreement between the parties achieved during the course of the legal proceedings) that was granted the status of court ruling, according to which the families recognized the trusts' ownership of the place in exchange for recognition of their status as "protected tenants."⁵¹ It is not clear whether the fact that the original property, which had been vacant, underwent renovations implemented by the Jordanian government, including construction and connection to infrastructures, was taken into account.

The residents' submissions to the court claimed, among other things, that the agreement was made "by mistake, deceit, and misdirection" and had not been approved by some of the families. They further claimed that Attorney Tussia-Cohen accepted the agreement because he was not aware of key facts of the matter.⁵² The negotiated agreement was granted the status of a court ruling and, because the residents were recognized as protected tenants of the property, the court decided to reject the demand for removal.⁵³ The residents of the place

⁵⁰ Civil Appeal 6239/08 Muhammad Kamel al-Kurd vs. the Sephardic Community Council, Supreme Court, TAKDIN-ELYON 2008 (3) 573 (Hebrew); Yitzhak Tussia-Cohen, the attorney who represented the Palestinian families (who claim that Tussia-Cohen did not have their approval for this agreement), did not appeal the validity of the petition for ownership by the trusts but, instead, reaching a binding negotiated agreement – which can be appealed only if proven to be based on false evidence – recognizing the families as "protected tenants." Under this definition, the tenants and their descendants who live with them are guaranteed the right to live in the homes as long as they pay rent and abide by the severe restrictions regarding maintenance and renovation of the homes.

⁵¹ Civil Appeal 6239/08 Muhammad Kamel al-Kurd vs. the Sephardic Community Council, Supreme Court, TAKDIN-ELYON 2008 (3) 573 (Hebrew); Civil Appeal 6920/08 Maher Hanoun vs. The Sephardic Community Council, Supreme Court, TAKDIN ELYON 2008 (3) 2530 (Hebrew); Civil File (Jerusalem) 3457/82 The Sephardic Community Council of Jerusalem et al. vs. N. Hanoun et al. Y. Hyman, "Shimon HaTzadik's Hot Compound," NRG, 26.8.2008, <http://www.nrg.co.il/online/54/ART1/778/643.html> (Hebrew).

⁵² Civil Appeal 6920/08 Maher Hanoun vs. The Sephardic Community Council, Supreme Court, TAKDIN-ELYON 2008 (3) 2530 (Hebrew); Civil File (Jerusalem) 3258/00 Muhammad Kamel al-Kurd et al. vs. The Sephardic Community Council of Jerusalem et al., Magistrate's Court, TAKDIN-SHALOM 2005 (3) 5580 (Hebrew); Interview with Attorney Hatem Abu Ahmed, July 2010. Hyman, "Shimon HaTzadik's Hot Compound."

⁵³ The ruling was issued on 20.5.1989. Civil Appeal 6239/08 Muhammad Kamel al-Kurd vs. the Sephardic Community Council, Supreme Court, TAKDIN-ELYON 2008 (3) 573 (Hebrew).

were effectively recognized as having long-term rental rights and were therefore required to pay rent to the owners and to maintain the property in an appropriate manner,⁵⁴ although most of them did not do so. This, therefore, is the legal basis for the eviction of the tenants from the houses: failure to meet their obligations as tenants of the rental property.⁵⁵

In 1993 the two Jewish trusts began filing suits for payment of rental fees and removal of the Palestinian tenants from the place, claiming that they have not paid rent, that some of them are making changes and additions to structures without a permit, and that they have not maintained the property in an appropriate manner.⁵⁶ In 2001 the Jerusalem Magistrates' Court accepted the trusts' demand, and an appeal challenging the ruling was denied.⁵⁷ In 1997 Sulayman Darwish Hajazi attempted to challenge the Jewish ownership of the houses, claiming that he found documents in the central Ottoman archives in Istanbul and the Jordanian archives according to which his family is the owner of part of the compound.⁵⁸ His petition was denied, as was his appeal to the Supreme Court.⁵⁹ The petitions of some of the Palestinian tenants to declare the negotiated agreement null and void were also denied.⁶⁰

⁵⁴ Civil Appeal (Jerusalem) 4744/02 Ja'abari Riad et al. vs. The Sephardic Community Council of Jerusalem, Magistrate's Court, TAKDIN-SHALOM 2005 (1) 18594 (Hebrew); Civil Appeal 6920/08 Maher Hanoun vs. The Sephardic Community Council, Supreme Court ,TAKDIN-ELYON 2008 (3) 2530 (Hebrew).

⁵⁵ Ir Amim, *Eviction of Tenants from Their Homes and the Settlement Plan in Sheikh Jarrah: The Case of Shimon HaTzadik*, May 2009 (Hebrew).

⁵⁶ Civil Appeal 6239/08 Muhammad Kamal Alqurd vs. the Sephardic Community Council, Supreme Court, TAKDIN ELYON 2008 (3) 573 (Hebrew). G. Cohen, "The Al-Kurd Family to Be Evicted from the Shimon HaTzadik Compound," *Kol Ha'Ir*, 16.8.2002 (Hebrew).

⁵⁷ Civil Appeal 6239/08 Muhammad Kamal Alqurd vs. the Sephardic Community Council, Supreme Court, TAKDIN ELYON 2008 (3) 573 (Hebrew).

⁵⁸ Hyman, "Shimon HaTzadik's Hot Compound." Civil File (Jerusalem) 1465/97 Hijazi Darwish Sulayman vs. The Sephardic Community Council et al., Jerusalem District Court 2002 (2) 66542 (Hebrew). Civil Appeal 4126/05 Sulayman Darwish Hijazi vs. the Sephardic Community Council et al., Supreme Court, TAKDIN ELYON 2006 (2) 4042 (Hebrew).

⁵⁹ Civil Appeal 4126/05 Sulayman Darwish Hijazi vs. the Sephardic Community Council et al., Supreme Court, TAKDIN ELYON 2006 (2) 4042 (Hebrew)

⁶⁰ Civil Appeal 6239/08 Muhammad Kamal Alqurd vs. the Sephardic Community Council, Supreme Court, TAKDIN ELYON 2008 (3) 573 (Hebrew). Civil Appeal 6920/08

According to the journalist and researcher Nadav Shragai, the two Jewish trusts sold their properties within the compound (for three million dollars) to an organization of settlers named “Homot Shalem.”⁶¹ Later, ownership of the territory was transferred to an organization named “Nahalat Shimon International,” which aims to advance construction and settlement plans in Sheikh Jarrah.⁶² In August 2008 this organization submitted a plan to the Regional Committee for Planning and Construction (Urban Building Scheme 12705) for the destruction of homes they own in which Palestinians reside, for the removal of 500 Palestinian residents, and for the construction of a Jewish neighborhood with 200 housing units.⁶³ The decision of the compound’s original owners (the two Jewish councils) to transfer ownership of the territory to settlers’ organizations had a decisive influence on the later developments. The chairman of the Sephardic Community Council, Yehezkel Zakai (a former Labor party Knesset member), explained that he decided to cooperate with the settlers’ group not on the basis of political motives but because of the conduct of the Palestinian tenants who built without permits and without coordination and tried to take over structures to which they had no legal right.⁶⁴ Members of the “General Council” were reluctant to sell the property but eventually the deal was approved by Rabbi Yosef Elyashiv, the senior Ashkenazi Haredi rabbi.⁶⁵

A public and legal question that has yet to be adequately addressed and clarified is the following: Is it appropriate that a community charitable trust site designated first and foremost for the poor of the community and for the purpose

Maher Hanoun vs. The Sephardic Community Council, Supreme Court, TAKDIN-ELYON 2008 (3) 2530 (Hebrew).

⁶¹ N. Shragai, “Plan: Arab Residents of Shimon HaTzadik Neighborhood to Be Evicted from Their Homes,” *Haaretz*, 12.10.2001 (Hebrew).

⁶² See in this context the text of Civil File 34600-03-10 (Hebrew).

⁶³ See Town Plan Scheme 12705. A. Eldar, “Court: Palestinians Shall Evacuate Homes in Sheikh Jarrah,” *Haaretz*, 18.5.2009 (Hebrew); <http://www.haaretz.co.il/hasite/spages/1086373.html> (Hebrew).

⁶⁴ N. Shragai, “Plan: Arab Residents of Shimon HaTzadik Neighborhood to Be Evicted from Their Homes,” *Haaretz*, 12.10.2001 (Hebrew).

⁶⁵ N. Shragai, “Plan: Arab Residents of Shimon HaTzadik Neighborhood to Be Evicted from Their Homes,” *Haaretz*, 12.10.2001 (Hebrew).

of residence near a holy site (the tomb of Shimon HaTzadik)⁶⁶ be sold to an ideological organization whose goals are not the same as the goals of those who originally designated the site?

5. The Eviction of Palestinian Residents

In 1998 a group of yeshiva students led by then-Knesset Member Benjamin Elon entered the compound in Sheikh Jarrah and took over a structure that had been a synagogue in the past. They renovated the structure, raised the flags of Israel and of the “Moledet” movement, and began conducting Torah lessons.⁶⁷ In time they entered other structures in the place – apparently by purchasing them, although the Palestinian side claims that it was by illegal takeover (we were unable to resolve this question decisively). This was the first step towards Jewish settlement in the neighborhood of Sheikh Jarrah, and the organizations worked towards this goal through various means. According to the journalist and researcher Nadav Shragai, political and municipal supporters contributed to these developments behind the scenes.⁶⁸ Later the Ministry of Housing provided funding for the security of the settlers through a private security company at a cost of 400,000 shekels annually.⁶⁹

In 1999, following legal proceedings against the family of Rifqa al-Kurd, claiming that they had undertaken illegal renovations and expanded the existing property in violation of the terms of the negotiated agreement of 1982, the Court ruled that the family members be evicted from the renovated portion and that it

⁶⁶ In this context, see Cohen, *Gershon the Wise*, 33, and Ben-Porat et al. (eds.) *Annals in the History of the Jewish Yishuv*, 225-226 (Hebrew). Goren, “The Parcel of Land Belonging to Shimon HaTzadik.”

⁶⁷ N. Shragai, “MK Elon and Yeshiva Students Entered Abandoned Building in Sheikh Jarrah, Former Synagogue,” *Haaretz*, 16.10.1998 (Hebrew).

N. Shragai, “Plan: Arab Residents of Shimon HaTzadik Neighborhood to Be Evicted from Their Homes,” *Haaretz*, 12.10.2001 (Hebrew). M. Mu’alem, “Confrontation Between Settlers and Palestinians Surrounding Ownership of House in Sheikh Jarrah,” *Haaretz*, 18.2.1999 (Hebrew).

⁶⁸ N. Shragai, “Plan: Arab Residents of Shimon HaTzadik Neighborhood to Be Evicted from Their Homes,” *Haaretz*, 12.10.2001 (Hebrew).

⁶⁹ N. Shragai, “Ministry of Housing to Fund Security for Shimon HaTzadik Neighborhood in East Jerusalem,” *Haaretz*, 12.7.1999 (Hebrew).

be sealed.⁷⁰ Following that, Jewish settlers entered the compound.⁷¹ In November 2008, after prolonged legal proceedings in which they eventually lost, the family of Fawziyya and Muhammad al-Kurd were forcibly removed from their home. Muhammad al-Kurd was ill and confined to a wheelchair, and died soon thereafter as a result of a heart attack.⁷²

The eviction of this family drew widespread local and international attention to the issue of Jewish settlement in Sheikh Jarrah. Later, in August 2009, following another court ruling, the families of Hanun and Al-Ghawi, who numbered 53 individuals, were expelled as well.⁷³ In their place, the organization settled Jewish residents. According to information we received from the Jewish neighborhood manager, 18 nuclear Jewish families and two bachelors reside in the place (in the homes of the evicted families and in additional houses in the compound of “Shimon HaTzadik”).⁷⁴ An order of eviction has also been filed against a fourth

⁷⁰ Civic Coalition for Defending Palestinian Rights in Jerusalem, *Dispossession and Eviction in Jerusalem* (Jerusalem: The Civic Coalition for Defending Palestinian, 2009), 9. See also <http://www.justjlm.org/families/>. See Annex 6.

⁷¹ N. Yahav, “Report: Settlers Take Control of Palestinian House in East Jerusalem,” *Walla*, 3.11.2009, <http://news.ep.walla.co.il/?w=22/1600902> (Hebrew).

⁷² G. Levy, “How Un-Goody Are Thy Tents, Jacob,” *Haaretz*, 26.12.2008 (Hebrew).

⁷³ B. Ravid and N. Hasson, “New Tensions Between Israel and the US Government: Two Palestinian Families Evicted from Sheikh Jarrah,” *Haaretz*, 3.8.2009 (Hebrew). N. Hasson, “The Palestinian Families Evicted from Their Homes Have Moved to the Facing Sidewalk,” *Haaretz*, 6.8.2009 (Hebrew). A. Eldar, “Sheikh Jarrah Evacuees: We were evicted by mistake,” *Haaretz*, 19.8.2009 (Hebrew). See Annex 6.

Following the 2001 ruling, the families of Hanoun and Ghawi were evicted, but they returned to their homes in 2006. In addition to his family’s eviction, Maher Hanoun was charged with contempt of court because of non-payment of rent and because of his refusal to vacate his home. The order sentenced him to three months’ incarceration; see Civil Appeals Authority 6920/08 Maher Hanoun vs. Sephardic Community Council, Supreme Court, TAKDIN ELYON 2008 (3) 2530 (Hebrew); Civil Appeals Authority 9161/08 Abed AlFatah Gawi et al. vs. The Sephardic Community Council of Jerusalem, Supreme Court (issued 16.2.2009) (Hebrew). A. Weiss, “The Eviction in Sheikh Jarrah: Protest in Jerusalem, Condemnation Around the World,” *Ynet*, 3.8.2009 (Hebrew).

⁷⁴ Conversation with Tzahi Mamo, manager of the “Shimon HaTzadik” Neighborhood, August 2010. See Annex 17.

family, the Sabagh family, and additional families (Diab, Dajani, Thaqafi) are facing similar measures.⁷⁵

Initially, the displaced families set up a protest tent in front of the house from which they had been forcibly removed. Later, after the oversight unit of the Municipality of Jerusalem destroyed and confiscated their tent 17 times (and fined them), in their words, they relocated to the neighborhood of Shuafat for the nights. Some of those displaced spend the day on the sidewalk in front of the home from which they were expelled (beneath the fig tree), where they provide information to visitors as part of their public struggle for local and international support. In addition, another Jewish family has recently settled in the compound of Umm Harun, which is located to the west of Nablus Road and has a few dozen housing units (originally it has 93). In September 2010 the Supreme Court rejected an appeal by Palestinian families claiming ownership over properties in this compound, thereby providing an opening for the eviction of Palestinian families residing there if a court finds that they have violated the terms of their lease as protected tenants, as in the case of the legal action that was taken against families in the compound near the tomb of Shimon HaTzadik.⁷⁶

6. Legal Issues Related to the Properties in East and West Jerusalem

The displacement of Palestinian tenants – refugees from 1948 who lost other homes and properties in West Jerusalem and in additional areas that came under Israeli sovereignty as a result of the 1948 War – raises the question of properties lost by both Jews and Arabs in the war and the question of restitution for these properties.

⁷⁵ Civil File 19795/08 (Hebrew); Interview with Attorney Hatem Abu-Ahmad, July 2010; N. Hasson, “Two More Palestinian Families Ordered to Vacate Their Homes in Sheikh Jarrah in East Jerusalem,” *Haaretz*, 7.4.2010 (Hebrew).

⁷⁶ N. Hasson, “New Supreme Court Ruling Permits Eviction of Dozens More Families from Sheikh Jarrah,” *Haaretz*, 28.9.2010 (Hebrew). For the ruling, see Civil Appeal 8954/06 Waqf Muhammad and Ibrahim Abdelrabo Ma’ou et al. vs. the Custodian General et al., Supreme Court, TAKDIN ELYON 2010 (3) 4310 (Hebrew).

During the course of the war, efforts were made to house Jewish refugees in Arab houses and neighborhoods that had been abandoned in Jerusalem. Until the first ceasefire, in June 1948, Jews who had fled from the Jewish Quarter, Nahalat Shimon, and other places were housed in Romemah, Katamon, Talbieh, and Rehavia – former predominantly Arab neighborhoods in West Jerusalem – among other locations. Towards the end of 1948, Jewish refugees began to be housed primarily in abandoned houses in Baq'a, the Greek Colony, and the German Colony.⁷⁷ According to the testimony of Michael Ben-Yair, former attorney general and resident of “Nahalat Shimon,” his family, like other Jewish families who had been displaced from their homes in 1948, was housed in substitute housing and then granted complete ownership of substitutionary property in the neighborhood of Romema from the Israeli Custodian of Absentee Property; that is, they received the homes and shops abandoned by Palestinians. Ben-Yair and his family believe that the compensation they received was adequate and decided not to petition for the property that had been theirs in Sheikh Jarrah, even though the Custodian General was willing to assist them in reestablishing ownership of that property.⁷⁸

It appears that the Israeli land authorities are prepared to assist Jews who seek to realize their property rights for assets they had owned in East Jerusalem before 1948, regardless of whether the original Jewish owners already received substitutionary property from the government of Israel. In contrast, Palestinians who owned property in West Jerusalem (or in other places within the Green Line) cannot reclaim their property because it has been transferred (according to the 1950 Absentee Property Law) to the Custodian of Absentee Property, located in the Ministry of Finance, which in turn sold it to the state (which in the meantime transferred most of it to other private and public entities).⁷⁹

⁷⁷ Golan, *Spatial Change—The Result of War*, 20-51, 72-74.

⁷⁸ Conversation with Attorney Michael Ben-Ya'ir, former attorney general, July 2010. His house had been in Nahalat Shimon, at number 61 Nablus Road, and in January 1949 had served as frontier-station of the “Hagana.” It should be noted that some former residents of Nahalat Shimon have adopted a different stance and demand the return of their properties within the neighborhood. See Y. Altman, “We Want to Return to Sheikh Jarrah: ‘We’ll pay the Arabs’,” *Ynet*, 14.10.2010: <http://www.ynet.co.il/articles/0,7340,L-3969690,00.html> (Hebrew).

⁷⁹ M. Benvenisti, *Facing the Sealed Wall* (Jerusalem: Widenveld and Nicholson, 1973) 205 (Hebrew).

According to Zamir and Benvenisti, following the annexation of East Jerusalem, Israeli authorities realized that ignoring the claims of East Jerusalem residents regarding their properties within Israel is inconsistent with the release of properties owned by Jews in East Jerusalem, and it undermines Israeli efforts to make the unification of Jerusalem permanent and irreversible. On the other hand, government officials feared that recognizing the rights of Palestinians from East Jerusalem to their properties in Israel would create a precedent for “right of restitution.”⁸⁰ For this reason the government decided not to allow the return of properties to residents of East Jerusalem, but it did amend the Absentee Property Law in 1973⁸¹ to allow Palestinians living within the Green Line and in East Jerusalem to claim compensation for properties transferred to the Custodian of Absentee Property on the basis of the property’s value on 29.11.1947; if the sum is large, it is to be paid in 15 installments over the course of 15 years.⁸² The amended law does not allow Palestinians to receive their properties in actuality but only reparation money. Very few Palestinians tried to exercise their right to compensation both because such a move is seen as granting legitimacy to Israel’s actions and because the compensatory value under the law was minuscule in relation to the real value of the property. Moreover, many Palestinians objected to a solution that would apply only to a minority of refugees and leave others out, and they therefore demanded a full and comprehensive solution to the refugee problem.⁸³

A petition to the High Court of Justice filed in 2008 by Muna Abu-Gosh reflects the difficulty Palestinians face in practice when seeking to implement property rights. Her father owned properties in Abu-Gosh, but in 1948 he left the village at the request of Israeli authorities, who promised that he would be resettled there after the war. He was only able to return in 1972, and in his absence, he was declared “absentee” and his properties transferred to the Custodian of Absentee

⁸⁰ E. Benvenisti and E. Zamir, *Private Property and the Israeli-Palestinian Settlement* (Jerusalem: The Jerusalem Institute for Israel Studies, 1998) 28 (Hebrew).

⁸¹ Absentees’ Property (Compensation) Law, 5733-1973, Book of Laws, 164 (Hebrew).

⁸² Zamir and Benvenisti, *The Legal Status of Lands*, 91 (Hebrew). See Absentees’ Property (Compensation) Law, 5733-1973, Book of Laws, 164, Articles 2, 6, 10, 15 and the supplement “Calculation of Compensation for Property Owners.”

⁸³ Benvenisti, *Facing the Sealed Wall*, 205-206.

Property and later sold to the Development Authority. His request to have his property returned was denied by the Custodian, and he rejected the suggestion that he submit a claim for compensation in accordance with the Absentees' Property (Compensation) Law of 1973. After her father's death, the daughter, Muna Abu-Gosh, sought to have the finding that her father was an "absentee" voided and to have the property returned to her as the legal heir, but her request was denied.⁸⁴ The High Court of Justice judges found that the request for the return of property had already been addressed in the past and that the father had been advised to petition for compensation but had not submitted such a petition or appealed the decision. The High Court of Justice also found that the question of voiding the finding that the father was an absentee should be referred to the appropriate civil court.⁸⁵

After 1967 the government of Israel debated whether to apply the Absentee Property Law to Palestinian properties in East Jerusalem. Shortly afterwards it decided that East Jerusalem residents would not be considered "absentees" under the Absentee Property Law with respect to their properties in East Jerusalem.⁸⁶ That is, the Custodian of Absentee Property (who at the time was part of the Israel Land Administration and today is supervised by the Minister of Finance) cannot take possession of their properties in East Jerusalem. The decision was accepted, among other reasons, because of concerns about Palestinian agitation in East Jerusalem and international pressure that would erode the legitimacy of Israeli control in the eastern part of the city.⁸⁷ This decision was also reflected in legislation,⁸⁸ but the law does not apply to Palestinians who were originally residents of the West Bank and owned property in areas that were annexed in East Jerusalem.⁸⁹ Nevertheless, in 1969 the attorney general at the time (and later the president of the Supreme Court), Meir Shamgar, instructed the Israeli Land

⁸⁴ High Court of Justice Ruling 3593/08 Muna Abu-Ghosh vs. the Custodian of Absentee Property et al., Supreme Court (Hebrew).

⁸⁵ High Court of Justice Ruling 3593/08 Muna Abu-Ghosh vs. the Custodian of Absentee Property et al., Supreme Court (Hebrew).

⁸⁶ Benvenisti and Zamir, *Lands Acquired by Israelis*, 87.

⁸⁷ See M. Rappaport, "That's Why There's a Fence," *Haaretz*, 21.1.2005 (Hebrew).

⁸⁸ Articles 3 and 4 of the 1970 Legal and Administrative Matters (Regulation) Law [Consolidated Version], 1970 Book of Laws, 138. See: Benvenisti and Zamir, *Lands Acquired by Israelis*, 87.

⁸⁹ Benvenisti and Zamir, *Private Property and the Israeli-Palestinian Settlement*, 27.

Administration that the Absentee Property Law must not be applied to properties located in East Jerusalem that belong to residents of Judea and Samaria. Shamgar wrote that “there is no justification for having the annexation of East Jerusalem, and only the annexation, lead to dispossession of personal property that has not in fact been abandoned but is, rather, located within area controlled by IDF forces at the time the property comes into our possession.”⁹⁰ The Minister of Justice at the time, Ya'akov Shimshon Shapira, approved this position, and then-Jerusalem Mayor Teddy Kollek also supported it.⁹¹ In 1977 a “temporary arrangement that will be reexamined” was adopted, according to which Palestinian residents of the territories outside the Green Line who have properties in East Jerusalem would have to approach the Custodian of Absentee Property at their own initiative and request to continue using their properties.⁹²

This issue resurfaced in the 1990s in the context of increased efforts by Jewish settlers’ organizations to purchase properties in the Old City and Silwan. An inter-ministerial committee headed by then-Director General of the Ministry of Justice Haim Klugman exposed, among other things, instances of grave misconduct on the part of the Custodian of Absentee Property, who declared that Palestinians had abandoned their properties, thus enabling the transfer of such properties to Jewish settlers’ organizations in accordance with documents and affidavits that the groups submitted to him, without confirming their validity or visiting the places.⁹³ After receiving the committee’s findings, then-Attorney General Yosef Harish issued instructions calling for the transfer of properties to these groups on the basis of the Absentee Property Law to cease. Then-Prime Minister Yitzhak

⁹⁰ M. Rappaport, “Against Orders of Mazuz – A Thousand Homes to Be Built in Har Khoma on ‘Absentee’ Lands,” *Haaretz*, 6.1.2008 (Hebrew).

⁹¹ Rappaport, “That’s Why There’s a Fence.”

⁹² A. Sirkin, “Mazuz Ordered: Stop Expropriating Absentee Property in East Jerusalem Immediately,” *news1*, 1.2.2005: <http://www.news1.co.il/Archive/001-D-63293-00.html?tag=02-22-37> (Hebrew).

⁹³ Report of the Committee to Examine Buildings in East Jerusalem, 10.9.1992 [the “Klugman Report”] (Hebrew). S. Berkovitz, *The Wars of the Holy Places* (Jerusalem: Hed Artzi and the Jerusalem Institute for Israel Studies, 2000), 179. R. Giladi, “Report of the Committee to Examine Buildings in East Jerusalem (Klugman Committee): Its Implications for a Final Status Agreement,” in R. Lapidot and A. Ramon (eds.) *The Old City of Jerusalem: A Report in the Wake of the Discussions of a Committee on the Old City* (Jerusalem: Jerusalem Institute for Israel Studies, 2002) 130-131 (Hebrew).

Rabin also declared that absenteeism was not to be used in order to displace permanent tenants who reside in East Jerusalem.⁹⁴

The use of the Absentee Property Law for the purposes of Jewish settlement in East Jerusalem was only temporarily stopped, and it was renewed in July 2004 because of the need to build the security fence. Following a decision of the Ministerial Committee on Jerusalem Affairs, the government decided that the Custodian of Absentee Property has authority over properties in East Jerusalem, but this decision was not publicly announced.⁹⁵ The immediate motivation behind the decision was that parts of the security fence route passed through lands owned by Palestinians who reside in the West Bank (for example, the areas of Khirbet Mazmuriyyah and Walaje), as well as the separation that the fence created between Palestinian residing to the east of the fence and their fields, which were located west of it – a separation that undermined their ability to work their lands.⁹⁶ This decision conflicted with the position of the Ministry of Justice, and Attorney General Meni Mazuz demanded that then-Minister of Finance Benjamin Netanyahu (who was responsible for implementing the Absentee Property Law) immediately cease applying the law to properties of residents of Judea and Samaria (Israeli term for the West Bank administered area beyond East Jerusalem) in East Jerusalem. Mazuz claimed that the Ministerial Committee on Jerusalem Affairs does not have the authority to make legal interpretations regarding the authority of the Custodian of Absentee Property. One of the rationales for his interpretation was that under international law, a state must respect the property rights of residents of territories captured in war.⁹⁷

⁹⁴ Rappaport, “That’s Why There’s a Fence.”

⁹⁵ Rappaport, “That’s Why There’s a Fence.”

⁹⁶ Rappaport, “That’s Why There’s a Fence.”

⁹⁷ See A. Eldar, “A Palestinian from Gaza Seeking Medical Care in a Jerusalem Hospital Should Go to Haiti,” *Haaretz*, 26.1.2010 (Hebrew); M. Rappaport, “Against Orders of Mazuz – A Thousand Homes to Be Built in Har Khoma on ‘Absentee’ Lands,” *Haaretz*, 6.1.2008; D. Scheffer, “Mazuz Stopped Land Expropriation in East Jerusalem,” *Ynet* 1.2.2005 (Hebrew). H. Magen, “Mazuz to Netanyahu: Stop Expropriating Land in East Jerusalem,” *Globes*, 1.2.2005. Simultaneously, Mazuz announced the start of administrative work on the setting of guidelines for practical problems resulting from the Separation Fence. Mazuz revealed that during discussions with the security sector it was decided to permit landowners who had worked lands within Jerusalem to continue working them (a decision that was not implemented). (M. Rappaport, “Property Owners in East Jerusalem Appealed to the High Court of Justice: Publish the List of Absentee

The issue soon reached the court, which ruled in a number of cases that the Custodian of Absentee Property cannot take possession of properties located in East Jerusalem and belonging to Palestinians residing in Judea and Samaria nor does he have the authority to transfer them to another party. This is because Israel has effective control over Judea and Samaria, so the residents there cannot be considered “absentee” or residents of a hostile state.⁹⁸

The method of registration of real estate ownership in East Jerusalem is itself problematic. A significant portion of the eastern part of the city is still registered in the land registry under the old system and has not yet been organized and updated in accordance with the Land (Settlement of Title) Ordinance (New Version) of 1969. As a result, the question of ownership is complicated, making it difficult for the Jewish settlers’ organizations to purchase lands from Arabs, and even making it difficult for the Custodian to reclaim properties that belong in part to owners considered absentee according to law. Members of Jewish settlers’ organizations have been pressuring the government and state authorities to resolve and update property ownership registration in East Jerusalem.⁹⁹

The legal status and practical position of Jewish refugees who were forced to leave East Jerusalem in 1948 are different from those of the Arab refugees. After 1967 Israel passed a law (the 1970 Legal and Administrative Matters (Regulation)

Properties,” *Haaretz*, 11.5.2005 (Hebrew)). It should be noted that, despite Mazuz’s finding, during the expansion of the neighborhood of Har Khoma (stage 2), lands were taken from Palestinian residents of Beit Sahrour for the construction of 188 housing units (of the 300 from the 2008 expansion) without compensation or judicial review, and during the third stage of neighborhood construction the press reported that approximately another thousand housing units had been built on lands of this sort. The Ministry of Justice argued that independent of the identity of the owners of the properties (abandoned or not), these lands were expropriated for public purposes, as were lands of Jews (M. Rappaport, “Har Khoma: Apartments to Be Built on ‘Abandoned’ Lands,” *Haaretz*, 6.1.2008 (Hebrew)).

⁹⁸ District Court Judge Bo’az Okon, for example, wrote in a 2006 ruling: “This is a type of legal trick not backed by any reality except annexation orders for certain territories; this is a form of lawmaking without law.” Y. Oz, “The District Court: Absentee Property Law Will Not Apply to Lands Owned by Palestinians in 1967,” *Haaretz*, 24.1.2006 (Hebrew).

⁹⁹ N. Shragai, *Planning, Demography, and Geopolitics in Jerusalem* (Jerusalem: Jerusalem Center for Public Affairs, 2010) 26-31 (Hebrew). [Appears in English as *Demography, Geopolitics, and the Future of Israel’s Capital: Jerusalem’s Proposed Master Plan*, but pagination here is for Hebrew.]

Law [Consolidated Version]) granting the Custodian General rights to Jewish properties that had been under Jordanian control during 1948-1967 and requiring the Custodian General to release the properties to their owners or owners' heirs after legal review.¹⁰⁰

It is noteworthy that whereas the Custodian of Absentee Property has, under the 1950 Absentee Property Law, broad discretion and is “permitted” but not obligated to release absentee property to its owners,¹⁰¹ the Custodian General must release properties to their original owners (after verifying their ownership documents).¹⁰² The 1970 law and the 1973 amendment to the Absentee Property Law (Absentees’ Property (Compensation) Law of 1973) together created a legal gap between the statuses of groups of owners who abandoned properties during the 1948 War. Palestinian owners of property within Israel can only receive compensation and only at the discretion of the Custodian of Absentee Property. Jewish owners of property in East Jerusalem before 1948 receive their properties in kind (unless expropriated for public purposes) without the Custodian General being able to exercise any discretion on the matter.

On the basis of the 1970 law, the Jewish trusts at the “Shimon HaTzadik” site were granted renewed ownership of the compound at Sheikh Jarrah (later transferred to the organization “Nahalat Shimon International”), while the Palestinian residents who resided there were recognized as “protected tenants,” regarded as long-term renters. The 1970 law also declared that in cases of properties purchased after 1967 for public purposes (expropriated) by the State of Israel, the original Israeli owners would receive financial compensation only.¹⁰³

¹⁰⁰ Benvenisti and Zamir, *Private Property and the Israeli-Palestinian Settlement*, 27. Benvenisti and Zamir, *Lands Acquired by Israelis*, 89-91. See Article 5 of the 1970 Legal and Administrative Matters (Regulation) Law [Consolidated Version], *Book of Laws*, 1970, 138.

¹⁰¹ See Articles 28 and 29 of the 1950 Absentee Property Law, *Book of Laws*, 1950, 86. Article 28 holds that, “The Custodian has the sole discretion but taking into account the instructions of Article 29 to release property upon his authorization.” Article 29 holds that the Custodian shall not use this authority “unless it has … the recommendation of a special government-appointed committee.”

¹⁰² See Article 5 of the 1970 Legal and Administrative Matters (Regulation) Law [Consolidated Version], *Book of Laws*, 1970, 138.

¹⁰³ Benvenisti and Zamir, *Private Property and the Israeli-Palestinian Settlement*, 28. For example, expropriation took place in the Jewish Quarter and Ramat Eshkol.

The law also declared that if these properties were used during Jordanian times for public purposes, and these needs continued after 1967, they would not be returned to their owners, who would have to settle for financial compensation.¹⁰⁴ In this context the question arises as to whether the settlement of Palestinian refugees in Sheikh Jarrah by the Jordanian government and UNRWA is considered “public purposes” that continued to exist after 1967. This exception is part of a trend – within Israeli law being applied to East Jerusalem and within security legislation on the West Bank – of *de facto* recognition of actions undertaken by the Jordanian Custodian of Enemy Property with respect to Israeli properties, and this recognition was presented as an argument in the legal discussions about Jewish settlement in Sheikh Jarrah.¹⁰⁵

7. Jewish Settlement in the Heart of Arab Neighborhoods in East Jerusalem

Israel’s official policy is that Jerusalem in its entirety is a united city under full Israeli sovereignty. In 1967 Jerusalem’s municipal territory tripled with the addition of areas east of the Green Line in what is known today as “East Jerusalem.” Israel has constructed ten Jewish neighborhoods in East Jerusalem, where the number of Jewish residents (43% of the total population of East Jerusalem) is today approaching the number of Palestinian residents of the eastern part of the city. This is in addition to the expropriation, construction, and development of the Jewish Quarter of the Old City as a national Jewish site. The location of the Jewish neighborhoods was determined by the availability of land (for example, military posts of the Jordanian Legion served as the nucleus of a neighborhood) as well as geopolitical considerations. Thus, for example, the contiguity of Jewish neighborhoods between Ramot Eshkol and Ma’alot Dafna with the French Hill and government compound in East Jerusalem connects

The question of whether Jewish property owners are receiving a realistic and higher compensation than Arab property owners is yet to be explored. This paper does not require us to address that question.

¹⁰⁴ Benvenisti and Zamir, *Private Property and the Israeli-Palestinian Settlement*, 27. Zamir and Benvenisti, *Lands Acquired by Israelis*, 91.

¹⁰⁵ Benvenisti and Zamir, *Private Property and the Israeli-Palestinian Settlement*, 19, 27. Interview with Hatem Abu-Ahmad, July 2010.

West Jerusalem with Mount Scopus and prevents its being disconnected again.¹⁰⁶ Contiguity between West Jerusalem and Mount Scopus was already ensured by the construction of the French Hill neighborhood in 1971 and reinforced in the 1980s with the construction of the government compound in Sheikh Jarrah. It follows that settlement in the neighborhood of Shimon HaTzadik is not essential for ensuring contiguity among areas under Israeli rule and Jewish ownership. Its purpose, according to statements of its initiators and supporters, is to prevent the possibility of future divided rule under the Clinton parameters.

In the 1990s the Oslo process inspired the political forces that support continued Israeli rule over East Jerusalem in its entirety (as well as the West Bank) to seek ways of preventing the transfer of Arab neighborhoods to Palestinian control. This led to increased efforts at Jewish settlement in Arab neighborhoods. Such efforts had begun earlier, with a focus on the Muslim and Christian Quarters in the Old City and in Silwan, and, as the Klugman Commission Report (1992) revealed, these efforts received various forms of government support and aid.¹⁰⁷ It should be noted that Ariel Sharon was among the prominent supporters of this policy. He personally purchased a house in the Muslim Quarter of the Old City in 1987 and, as the minister of housing (1990-1992), he saw to it that his ministry provided financial support for the activities of the settlers' organization "Ateret Cohanim."¹⁰⁸ In contrast, Jerusalem Mayor (until 1993) Teddy Kollek worked to limit the pressure to settle in Arab neighborhoods.¹⁰⁹ Kollek's policy

¹⁰⁶ Other considerations for determining the location of Jewish neighborhoods in East Jerusalem were: places of past-owned Jewish lands (Neve Ya'akov, 'Atarot, Har Khoma) and continuous contact with them (Pisgat Ze'ev), as well as acquisition of lands that were not privately or church owned (Gilo, Ramot).

¹⁰⁷ See R. Giladi, "Report of the Committee to Examine Buildings in East Jerusalem (Klugman Committee): Its Implications for a Final Status Agreement," in R. Lapidot and A. Ramon (eds.) *The Old City of Jerusalem: A Report in the Wake of the Discussions of a Committee on the Old City* (Jerusalem: Jerusalem Institute for Israel Studies, 2002) 127-137 (Hebrew).

¹⁰⁸ Berkovitz, *The Wars of the Holy Places*, 178.

¹⁰⁹ M. Klein, *Doves over Jerusalem's Sky* (Jerusalem: Jerusalem Institute for Israel Studies, 1999) 201 (Hebrew). Amir Cheashin argues that there were two exceptions: the neighborhood of Nof Zion, which was approved during the Kollek administration (Shamir government) and the neighborhood of Ma'ale Zeitim, which was approved towards the end of his administration (during the Rabin government). See A. Cheshin, "Everyone Built in Jerusalem," *Haaretz*, 13.4.2010 (Hebrew).

is illustrated by his response to the takeover of houses in the village of Silwan by activists from the organization EL'AD in October 1991 (on the eve of the Madrid Summit).¹¹⁰ Kollek based his objection on three reasons: The first reason was quantitative – in his words the settlement of a few thousand additional Jews in Jewish neighborhoods in East Jerusalem is preferable to settling a handful of Jews in an Arab neighborhood. The second reason was a combination of political, security, and image considerations – the consequences of displacing Arab residents from their homes and the image of the city throughout the world. The third reason was economic – the need to provide massive police resources for these purposes.¹¹¹ Kollek arrived at the place of dispute in Silwan and declared that the Jewish settlers there “think that they are honoring the past but in fact they are endangering the future.”¹¹²

Before 1996, Israeli government administrations focused mainly on establishing Jewish neighborhoods surrounding the Palestinian neighborhoods in East Jerusalem and very rarely encouraged settlement within the Palestinian neighborhoods,¹¹³ but with the change of administration in 1996 (the first Netanyahu government) and the change in municipal governance of Jerusalem (Ehud Olmert replacing Teddy Kollek), Jewish settlement initiatives in Arab neighborhoods increased, as did governmental support for the settlers’ organizations EL'AD and “Ateret Cohanim.”¹¹⁴ Support for these initiatives during the first Netanyahu administration came in particular from Minister of Infrastructures Ariel Sharon (Likud), Minister of Internal Affairs Eli Swissa (Shas), and Minister of Labor and Social Welfare Eli Yishai (Shas). It is worth noting that the guests of honor at the fundraising dinner organized by Ateret Cohanim in July 1997 to raise funds for the purchase of houses in the Old City were Prime Minister Benjamin Netanyahu and Mayor Ehud Olmert.¹¹⁵ Following the failure of the Camp David Summit in 2000, where the taboo on negotiating the division of sovereignty over Jerusalem

¹¹⁰ R. Friedland and R. Hecht, *To Rule Jerusalem* (Cambridge: Cambridge University Press, 1996), 440-441.

¹¹¹ Friedland and Hecht, *To Rule Jerusalem*, 441.

¹¹² Friedland and Hecht, *To Rule Jerusalem*, 441.

¹¹³ Klein, *Doves over Jerusalem's Sky*, 198.

¹¹⁴ The EL'AD organization was established in 1986 and has been involved in settling Jews in Silwan, the Armon HaNatziv ridge, Mount Olives, and Ras al-Amud since 1991.

¹¹⁵ Berkovitz, 181, 192. Klein, *Doves over Jerusalem's Sky*, 198, 201.

was broken and the status of the city as a main stumbling block to agreement became starkly clear, Jewish settlement efforts in Arab neighborhoods increased, as was apparent in the neighborhoods of Jabel Mukabbar, Abu Dis, and Sheikh Jarrah, among others.¹¹⁶

¹¹⁶ Regarding Jewish settlement in Arab neighborhoods in East Jerusalem, see Annex 19.

Part B – Strategic and Political Implications

This section will address the implications of Jewish settlement in Sheikh Jarrah and in the heart of other Arab neighborhoods in parts of East Jerusalem that are beyond the Green Line for the State of Israel’s strategic interests and for the goals of the government and the Jerusalem municipality with respect to the future, the prosperity, and the status of Jerusalem, as well as for international recognition of Israel’s status in Jerusalem. Israel’s principal interests with respect to Jerusalem and to property abandoned in 1948 may be defined as follows:

- Safeguarding Israeli interests in the Historic Basin and the Temple Mount (whether by sovereignty, an international solution, or other special arrangements);
- Ensuring Israeli sovereignty in Jewish neighborhoods beyond the Green Line (East Jerusalem) and territorial contiguity with West Jerusalem; and
- Rejection of demands for the restitution of Palestinian refugee property in West Jerusalem and within the Green Line.

Settlement in Sheikh Jarrah could undermine these vital interests, in particular the problem of restitution of refugee property abandoned in 1948 within the Green Line. This section will address that issue and offer a number of examples illustrating how past Israeli government administrations found judicial and administrative solutions to the problem and adopted a policy that reflected their awareness of the severe implications of reclaiming Jewish ownership of property in East Jerusalem.

1. The Opening of the “1948 Files” Regarding Restitution of Palestinian Properties in West Jerusalem and Israel

The most severe potential implication of Jewish settlement in Sheikh Jarrah for the State of Israel’s strategic interests, as described in Part A above, is the setting of a precedent that would reopen claims for the restitution of private Palestinian properties within Israel, including West Jerusalem.

It should be noted that within Israel there are territories totaling between four and five million dunam (between a fifth and a quarter of the area of the state)¹¹⁷ that were abandoned Palestinian properties, which were then nationalized in the framework of the Absentee Property Law.¹¹⁸ The Palestinian representatives have always demanded that these properties be returned to them as part of a compromise agreement with Israel, and the Sheikh Jarrah affair reinforces their demand. During the Anapolis negotiation process (2007-2008) the Palestinians presented their assessment of damages due them – in lieu of return to the land and restitution for property – in the astronomical amount of 300 billion dollars. Israel counters the Palestinian claims with claims for Jewish property that was abandoned in Arab countries on the eve and following the establishment of the State of Israel. This was a large amount of property, estimated by some researches to equal or even surpass the value of property lost by Palestinian refugees.¹¹⁹ For this reason, mutual concession of Jewish and Palestinian refugees' property demands is a first-order Israeli interest.

In this context it is worth mentioning the March 2010 ruling of the European Court of Human Rights, which addressed the claims of Greek-Cypriot refugees for return and restitution of properties in North Cyprus that they abandoned following the Turkish occupation in 1974. The European Court did not accept the claims for return and restitution, and it ruled that the appropriate solution is for the refugees to receive compensation from the Turkish authorities for their properties because of the current reality, the passage of 35 years since the refugees abandoned their properties, and the desire “to ensure that the redress applied to

¹¹⁷ The precise figures are in dispute. See for example Haim Sandberg, *Israeli Lands, Zionism, and Post-Zionism* (Jerusalem: The Harry and Michael Sacher Institute for Legislative Research and Comparative Law, Faculty of Law, Hebrew University, 2007) (Hebrew); O. Yiftachel and S. Kedar, “Landed Power: The Making of the Israeli Land Regime,” *Theory and Criticism*, vol. 16 (2000), 67-85.

¹¹⁸ Half the territory of the state was registered during Ottoman times as state property and during the British Mandate as public lands divisible among all residents of the country, and Palestinians claims “traditional ownership” of these lands as well. For example the Bedouin in the Negev claim a territory of 650,000 dunam. See Sandberg, *Israeli Lands*.

¹¹⁹ In this context see B. Yemini, “The Jewish Nakba: Expulsion, Massacre, and Forced Conversion,” *NRG*, 16.5.2009: <http://www.nrg.co.il/online/1/ART1/891/209.html>. U. Baruch, “Jewish Property More Valuable Than Palestinian Authority’s,” *Channel 7*, 4.2.2009: <http://www.inn.co.il/News/News.aspx/185094>. See also: <http://jewishrefugees.blogspot.com/>; <http://www.jewishvirtuallibrary.org/jsource/History/jewref.html>

those old injuries does not create disproportionate new wrongs".¹²⁰ Some see this ruling as a precedent for the denial of Palestinian restitution claims,¹²¹ but the decision is relevant in the case of return of Jewish property in Sheikh Jarrah as well, and it highlights the problems inherent in that case.

Taking Palestinian claims into account, it becomes apparent that the activities of settlers' organizations, which are based on actually reclaiming Jewish property and evicting Palestinians from their home, could threaten a strategic interest of the State of Israel, that is, preventing Palestinian claims for return and restitution. Israel has an interest in ensuring that when the issue is raised during negotiations on a final status agreement, the properties of Jewish and Arab refugees are mutually offset. Allowing only Jews to reclaim property, as occurred in Sheikh Jarrah, creates a precedent that could inspire Palestinians to demand the return of property they had owned before 1948 in areas now subject to Israeli sovereignty, and it reinforces the legal and moral legitimacy of this demand.

The claims for return of Palestinian property in West Jerusalem specifically, or in Israel generally, is one of the cornerstones of Palestinian demands and is a concrete problem that could reach international legal fora. According to newspaper reports, the Palestinian families that were evicted in Sheikh Jarrah declared that they were considering petitioning the International Criminal Court in The Hague.¹²² The seriousness of the Palestinian demand is reflected in a position paper entitled "Palestinian Property Rights in West Jerusalem: A United City with Equal Rights

¹²⁰ The decision of the European Court of Human Rights is available at:
<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=864000&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=864000&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

See also Y. Zilbershats and N. Goren-Amitai, *The Return of Palestinian Refugees to the State of Israel* (Jerusalem: Mesila Center, 2010) 77-81.

¹²¹ See the comments of Prof. Benvenisti in A. Eldar, "For the Information of Israelis and Palestinians, Even the Right of Return Has a Statute of Limitations," *Haaretz*, 13.3.2010 (Hebrew). See also Zilbershats and Goren-Amitai, 81-82.

¹²² N. Hasson, "Many Leaders of the Struggle Against Sheikh Jarrah Settlers Come from Religious Background," *Haaretz*, 25.6.2010 (Hebrew). Maan, Abdul Qader: "Sheikh Jarrah evictions based on forgeries," 6/4/2010: <http://www.maannews.net/eng/ViewDetails.aspx?ID=274582>

for All?” published in May 2010 by the PLO’s Negotiations Affairs Department, headed by Dr. Saeb Erekat.¹²³

Moreover, in October 2010 it became known that following the precedents of return of Jewish properties in East Jerusalem to their owners, Palestinian entities are planning to submit petitions to Israeli courts for return of properties in West Jerusalem that had been Palestinian-owned prior to 1948.¹²⁴ These entities are aware of the legal status established by the Absentee Property Law in this context, but they argue that the court petition will be based on international law and the claim that there is a legal double standard with relation to this issue.¹²⁵ The legal debate surrounding these claims is likely to reverberate throughout the world.

The eviction of Palestinian families from Sheikh Jarrah underscores the lack of symmetry regarding the return of property, given that these are refugee families who owned property within the Green Line before 1948, including West Jerusalem. The Palestinian residents of Sheikh Jarrah told the press that they were prepared to relinquish rights of residence within the houses in dispute in exchange for the properties they left in Israel, which were transferred to Israeli entities through the Absentee Property Law. The reverse position, based on the same principle of symmetry, was also voiced: Nasser Ghawi, one of the displaced Palestinians, said after being evicted that he was prepared to relinquish a property of 18 dunam that had belonged to his family in his ancestral village of Sarafand, within the territory of Israel, and in exchange to acquire full ownership of his home in Sheikh Jarrah, but he did not receive a response to this proposal.¹²⁶ **In this respect the Sheikh Jarrah affair**

¹²³ A. Eldar, “From Sheikh Jarrah to Talbieh – The Absentee from 6 Molcho Street,” *Haaretz* 15.7.2010 (Hebrew). The position paper published by the PLO’s Negotiations Division is entitled, “Palestinian Property Rights in West Jerusalem: A United City? With Equal Rights for All?”

¹²⁴ Y. Eli and A. Meniv, “Palestinians to Petition Court for Return of Properties in East Jerusalem,” *NRG*, 9.10.2010.

Arab media coverage of this is illustrated in an interview published in “Al-Mustaql” with Muhammad Zuhdi al-Nashashibi, member of the Executive Council of the PLO: 1.10.2010 ش. الجوهرى, ”النشاشيبى: يفتح النار على عباس فى اجتماع اللجنة التنفيذية اليوم”, المستقبل, <http://www.almustaql-a.com/NewsDetails.aspx?NewsID=12343&Type=9>

¹²⁵ Eli and Meniv, “Palestinians to Petition Court.”

¹²⁶ A. Oshrov, “Nasser Ghawi Presents: This Is How We’ll Fight the Jews of Sheikh Jarrah,” *NRG*, 5.3.2010: <http://www.nrg.co.il/online/54/ART2/075/305.html>

set a unilateral precedent that could have legal implications for Israel in international legal fora, central among these being the demand for restitution of Palestinian property and a renewal of public debate over Resolution 194 regarding the return of refugees.

It is estimated that in June 1967 approximately 10,000 of the residents of East Jerusalem had been born and lived in West Jerusalem before 1948¹²⁷ and because of the war had abandoned their homes and properties, which were then taken over by the government of Israel under the Absentee Property Law (1950) and transferred to Israeli public or private entities.

Since the 1980s, the PLO has been collecting documentation about Arab property in West Jerusalem. In 1982 the PLO requested access to documents in the archives of the United Nations Conciliation Commission for Palestine (UNCCP). The Conciliation Commission, which had been established by the UN in December 1948 in order to promote a peaceful resolution of the Israeli-Arab conflict, gathered documentation about Palestinian property within Israeli territory in two phases: The first phase, in 1951, involved a quick, preliminary survey of the scope of properties abandoned and their value on the basis of British Mandate maps and reports. During the second phase, beginning in 1952, the Technical Office of the Conciliation Commission undertook a more comprehensive effort, which continued until 1964. This project led to a report detailing the estimated value of Arab properties in Israeli territory, but most of the contents of this report have long remained concealed from the public.¹²⁸ In the mid-1980s the PLO requested and received copies of this archival material, which was then filed with the PLO's Economic Division in Damascus. In the 1990s the PLO and the United Nations led a project for the preservation and computerization of the archival material, making it more accessible.¹²⁹

The researcher Michael Fischbach used these archives for his research and wrote that the documentation therein includes details of the properties, maps, and

¹²⁷ Benvenisti, *Facing the Sealed Wall*, 204.

¹²⁸ M. Fischbach, "The Usefulness of the UNCCP Archives for Palestinian Refugee Compensation/Restitution Claims," *Stocktaking Conference on Palestinian Refugee Research* (June 17-20, 2003), 2-4.

¹²⁹ Fischbach, 13-15.

Ottoman and Mandate land registration, and that it also includes estimates of real estate, communal properties, and proposals for the calculation of compensation.¹³⁰

In the 1990s, in preparation for negotiations towards a final status agreement, the PLO began building a database of Arab properties in West Jerusalem. Two Palestinian institutions led the effort: The Institute for Research and Legal Services on Land and Water Issues and The Association for the Defense of Human Rights. In 1999, Faisal al-Husayni, the Palestinian Authority official responsible for Jerusalem at the time, declared that 70% of the territory of West Jerusalem is Palestinian property.¹³¹ During the negotiations that took place regarding the question of Jerusalem in the period of the Barak administration (1999-2001), the Palestinians demanded compensation for Palestinian property in West Jerusalem.¹³²

In January 2010, a book by Dr. Adnan Abdel Razek, which was based on the Conciliation Commission's archives, was published. It summarizes and maps by neighborhood the Palestinian properties that were abandoned in 1948 in West Jerusalem. Without ascertaining its validity, the data published by this author and various Palestinian sources is presented here in order to illustrate the scope of the problem. Abdel Razek focuses on a dozen neighborhoods (with a majority of Arab residents)¹³³ and makes note of additional predominantly Jewish neighborhoods that included Arab properties as well.¹³⁴

According to Abdel Razek, Israel took control of 16,261 dunam in West Jerusalem, 5,126 of which were Arab-owned (including houses on territory totaling about 913,300 square meters), 850 dunam of Arab-owned no man's land

¹³⁰ Fischbach, 4-13.

¹³¹ M. Klein, *Shattering a Taboo: The Contacts Toward a Permanent Status Agreement in Jerusalem 1994-2001* (Jerusalem: Jerusalem Institute for Israel Studies, 2001), 38-39.

¹³² Klein, *Shattering a Taboo*, 78. See the Martinus Paper prepared at Taba (January 2001): A. Qurie, *Beyond Oslo* (London, NY: I.B. Tauris, 2008) 355.

¹³³ See Annex 4.

¹³⁴ For example in Jaffa Road, Mahaneh Yehudah, Shem'aa, Mamilla, Romemah, Talpiot, Mekor-Haim, Saint-Louis, Manshiyah, the Russian Compound, the Schendler Compound, etc. In all, the author details 41 large plots of land (in Arabic: *hawd*). See Adnan Tawfiq Abdel Razek, *Al Izdihar al-Mi'mari al-Arabi fi Gharbi al-Quds al-Muhtalla* (the flourishing of Arab architecture in the western part of occupied Jerusalem) (Jerusalem: Jum'iyyat al-Dirasat al-'Arabiyya, 2010).

(where the 1949 ceasefire agreement between Israel and Jordan established that neither side would have sovereignty), 402 dunam of Arab public lands, and 2,473 dunam owned by Christian institutions. He estimated that a third of the property in West Jerusalem (5,478 dunam, including public lands, apparently) was Arab-owned in 1947, 30% (4,855 dunam) was Jewish-owned, 15% (2,473) was owned by Christian institutions, and the rest comprised public institutions, roads, and railways.¹³⁵ In the foreword to his book, Abdel Razek stresses that his research is a response to Israeli settlement activities within Arab neighborhoods in East Jerusalem and to the efforts “to wipe out the Arab contribution to the urban and architectural development of Jerusalem before the 1948 war.”¹³⁶ **The importance of Abdel Razek’s research is that it provides concretization and illustration of Palestinian demands for return of properties in Jerusalem and within the Green Line. It receives additional importance when we take into account that the PLO and the Palestinian Authority pose the demand for restitution of property as their fundamental position in the conflict.**

In the past, Israeli authorities were highly attuned to the danger of setting a precedent in the matter of property restitution. For example, the lawsuit of Jewish heirs to the estate of Yaakov Yosef Schechter involved lands within the district of Jerusalem that were part of the West Bank, beyond the municipal boundaries of the city.¹³⁷ The head of the civil administration explained the rejection of the heirs’ request, among other reasons, by arguing that it could “lead to demands by Palestinian refugee residents of the area for reciprocal release, at this early stage, of their properties within the State of Israel, as well as to an increase of disputes over land and of tension between Israelis and Palestinians in the region.”¹³⁸ The head of the Civil Administration wrote, “In my estimation, the return of properties of Israelis to their owners could seriously undermine public order in the region, which would be aggravated by the fact that the problem of lands is an aspect

¹³⁵ Abdel Razek, 85.

¹³⁶ Abdel Razek, 10.

¹³⁷ At the same time, it should be noted that Jewish ownership of lands in Judea and Samaria was used for the establishment of Jewish settlements. See Zamir and Benvenisti,, *Lands Acquired by Israelis*, 169-171.

¹³⁸ High Court of Justice Ruling 1285/93, Yaakov Yosef Schechter vs. Commander of the Judea and Samaria Division and the Custodian of Absentee and Government Property in Judea and Samaria, Supreme Court, TAKDIN ELYON 96 (4) 15 (Hebrew).

of the territorial question that is at the heart of the conflict between Israel and the Palestinians.”¹³⁹ The matter was brought to the High Court of Justice, which backed up the authorities’ decision and argued that the head of Civil Administration has the authority to weigh the consequences of petitions for land as they affect security and public order within his jurisdiction. The president of the Supreme Court at the time, Justice Aharon Barak, wrote, “These are considerations that the head of the Civil Administration is authorized to and must weigh.”¹⁴⁰ In our opinion, despite the difference between the legal status of East Jerusalem and the West Bank, this argument is valid for Jewish properties in East Jerusalem as well. The Sheikh Jarrah affair, like the abovementioned case in the West Bank, could pave the way for Palestinian refugees to claim restitution.

2. Restricting the Government’s Freedom of Action During Negotiations for a Possible Agreement on Jerusalem

Jewish settlement in the heart of Arab neighborhoods, and particularly in Sheikh Jarrah, has the potential to tie the hands of the current government and every future government in negotiations for a compromise with the Palestinians regarding Jerusalem on the basis of ethno-national division according the parameters proposed by US President Bill Clinton in December 2000. Supporters of Jewish settlement in Arab neighborhoods are certain that their changes to the human mosaic will make it impossible to divide Jerusalem between Jews and Arabs.¹⁴¹ The intention of those promoting Jewish settlement in Sheikh Jarrah is to create a Jewish neighborhood with hundreds of housing unit in the heart of the Arab neighborhood. Jewish settlement in the heart of Arab neighborhoods, whatever

¹³⁹ High Court of Justice Ruling 1285/93, Yaacov Yosef Schechter vs. Commander of the Judea and Samaria Division and the Custodian of Absentee and Government Property in Judea and Samaria, Supreme Court, TAKDIN ELYON 96 (4) 15 (Hebrew).

¹⁴⁰ High Court of Justice Ruling 1285/93, Yaacov Yosef Schechter vs. Commander of the Judea and Samaria Division and the Custodian of Absentee and Government Property in Judea and Samaria, Supreme Court, TAKDIN ELYON 96 (4) 15 (Hebrew).

¹⁴¹ Nadav Shragai, “The U.S.-Israeli Dispute over Building in Jerusalem: The Sheikh Jarrah-Shimon HaTzadik Neighborhood,” *Jerusalem Issue Briefs*, Jerusalem Center for Public Affairs, Vol. 9, No. 4; 27 July 2009, available at <http://www.jcpa.org/JCPA/Templates>ShowPage.asp?DBID=1.&LNGID=1&TMID=111&FID=442&PID=0&IID=3056>

its purpose, has the following potential consequences: severing the contiguity of Palestinian residence (although under a political agreement, technical solutions could be sought to connect between neighborhoods); reinforcing the Jewish character of the city, including parts that are Arab today; and the creation of a politically irreversible situation, that is, an urban and residential situation that would prevent the division of Jerusalem in the context of a peace agreement between Israel and the Palestinians. Government efforts to develop Jerusalem (for example, parks surrounding the walls of the Old City) in areas that border the Old City could also be interpreted as an attempt to sever the contiguity of Arab residence between the Old City and adjacent neighborhoods.¹⁴² It follows that the increase in Jewish settlement in the neighborhood of Sheikh Jarrah along the lines of existing and future plans could sever the contiguity of Arab residence in East Jerusalem and disconnect the Old City from Arab neighborhoods to its north and south.

These objectives were voiced in media interviews with representatives of the settlers and their ideological supporters. For example, according to an August 2003 news article, the minister of housing in the government of Ariel Sharon, Efi Eitam (of the national religious party HaMafdal) initiated a plan to settle Jews in Arab neighborhoods “for the purpose of preventing the division of the capital of Israel.” In an interview, Eitam said that “investment in Arab neighborhoods in Jerusalem, alongside settlement in the neighborhood of Ma’ale HaZeitim, proves that Jerusalem is a united city and will remain so forever.” He added that “since the latest round of Camp David talks, during the Barak administration, the division of Jerusalem is no longer taboo.”¹⁴³ During the same period, Eitam revived an old plan (which had been suspended by the Rabin government in the early 1990s) to settle Jews in the neighborhood of Sheikh Jarrah (the neighborhood’s name as indicated in the plan was Wadi Joz). Yehonatan Yosef, spokesman for the neighborhood of Shimon HaTzadik, also defined the goals of Jewish construction in Arab neighborhoods in East Jerusalem as “thwarting the crazy idea of dividing

¹⁴² “Parks Fortify Israel's Claim to Jerusalem,” NY Times, May 9, 2009. In this context, see Jerusalem Development Authority, *Government Plan for “Strengthening the Basin of the Old City and Mount Olives”: Status Report, January 2008* (Jerusalem: Jerusalem Development Authority, 2008) (Hebrew).

¹⁴³ O. Petersberg, “Efi Eitam’s Secret Plan,” *Ynet*, 1.8.2003, <http://www.ynet.co.il/articles/0,7340,L-2713443,00.html> (Hebrew).

Jerusalem” and added, “if we wish to exist, we must populate [Jerusalem] with Jews, from Ma’ale HaZeitim to Shimon HaTzadik and from Sha’ar HaMizrach (another place of Jewish settlement activity, in the entrance to Jerusalem from the east) to the Jewish Quarter... If Jews do not settle in East Jerusalem it will be handed over to our worst enemies.”¹⁴⁴

The eviction of Palestinian families from Sheikh Jarrah and the announcement of construction plans in this site and in other Arab neighborhoods in East Jerusalem have the potential to undermine efforts to advance the peace process between Israel and the Palestinian Authority. They generate inter-communal tension and at times even violence, and they make it difficult for the Palestinian leadership to advance the negotiating process in any significant way as long as the Israeli side is unilaterally establishing facts on the disputed ground that is supposed to be the subject of negotiations towards a permanent agreement.

3. De-Legitimization of Israel

Jewish settlement in Sheikh Jarrah is particularly problematic because it provokes criticism on three levels. Israel’s critics argue that in terms of international law, settlement in East Jerusalem is considered “settlement of occupied territory” and eviction of Palestinian tenants from properties in this territory (for the purpose of returning them to their original owners) is perceived as a violation of the rules established by the Hague Convention (1907).¹⁴⁵ These actions highlight the inequality between Jews who can implement their ownership rights in lieu of property they held before 1948 (while using it for settlement initiatives that

¹⁴⁴ Y. Yosef, “In Sheikh Jarrah the Left Is Fully Exposed,” *NRG*, 11.3.2010, <http://www.nrg.co.il/online/1/ART2/042/562.html> (Hebrew).

¹⁴⁵ Zamir and Benvenisti state, “The eviction of private tenants from their properties in order to return the properties to their original owners conflicts with the ruling power’s obligation to refrain from causing harm to individual property (including rights of tenancy) in territory under military occupation... It would be possible to return property to its original owners under the condition of continued private or public use by the current possessors, thus turning the original owners into lessors of the property, but this solution could exacerbate friction and tension between the Palestinian residents and the Israeli settlers to the point of endangering public order.” See Zamir and Benvenisti, *Lands Acquired by Israelis*, 32.

conflict with the interests of their Palestinian neighbors) and the Arab residents of the city who cannot do the same with respect to their property in West Jerusalem specifically and in Israel generally. On the humanitarian level, they see the settlement of Jews at the expense of Palestinians as a violation of human rights, particularly when this turns the Palestinians into refugees once again, having already been forced to leave their homes in 1948. Likewise, implementation of property rights in a discriminatory manner is perceived as an additional blow to human rights and as an immoral act. At the political level, these acts are seen as undermining the peace process.

Jewish settlement in Sheikh Jarrah thus becomes another in a list of issues used by those who seek to undermine Israel's legitimacy. It could also become another issue on the agenda of international legal fora dealing with human rights. In recent decades, human rights have shifted from being a state issue to a global issue that belongs to the international community and has the potential to impinge on the sovereignty of countries that grossly violate these rights. Israel's legitimacy and actions are subject to a widespread assault these days. **Settlers' groups are taking advantage of legal procedures and ownership rights to realize their particular objectives, thereby adding another excuse to attack Israel in global legal and political venues.**

The eviction of the Palestinian families in Sheikh Jarrah provoked widespread criticism and protest as well as massive condemnation from official and unofficial sources throughout the world. Widespread media coverage of the expulsion of the Palestinian families in order to house Jews as part of an ideological agenda that conflicts with territorial compromise in Jerusalem further erodes the legitimacy of Israeli policy in global public opinion and among western governments, including countries friendly to Israel. For example, US Secretary of State Hillary Clinton called the action "deeply regrettable" and stated, "I urge the government of Israel and municipal officials to refrain from such provocative actions,"¹⁴⁶ adding that the United States would not recognize any unilateral changes to the status quo in Jerusalem.¹⁴⁷ US State Department Spokesperson Megan Mattson said that the

¹⁴⁶ N. Mozgovaya and B. Ravid, "Clinton slams Israel for evicting Arab families from East Jerusalem," *Haaretz*, 3.8.2009.

¹⁴⁷ B. Ravid, "Washington summons Israel envoy over East Jerusalem eviction," *Haaretz*, 5.8.2009.

Israeli move contravenes its commitments under the “Road Map.”¹⁴⁸ The United States twice issued diplomatic protests to Israel¹⁴⁹ and Israel’s ambassador to Washington, Michael Oren, was summoned to the State Department to hear the US denouncement of Israel’s actions.¹⁵⁰ UN Secretary-General Ban Ki-moon also addressed this issue and, following the entry of a Jewish family into the home of one of the evicted families in Sheikh Jarrah, he issued a statement arguing that, “These actions stoke tensions, cause suffering and further undermine trust,” and he called on Israel to “cease such provocative actions.”¹⁵¹ United Nations Special Coordinator for the Middle East Peace Robert Serry said that the eviction is contrary to the Geneva Convention provisions relating to occupied territory and undermine efforts of the international community to promote negotiations towards peace between the two sides.¹⁵²

European countries also voiced criticism: The French Foreign Ministry expressed regret over the eviction of families from their homes and said that the move is illegal under international law and undermines the peace process.¹⁵³ Sweden, which held the rotating presidency of the European Union at the time, published an announcement harshly criticizing the Israeli actions, terming them “unacceptable.” Such acts are “illegal under international law” and “contravene repeated calls by the international community ... to refrain from any provocative actions in East Jerusalem,” according to the Swedish statement.¹⁵⁴ The British Consulate in East Jerusalem (located in Sheikh Jarrah) also published a statement

¹⁴⁸ A. Weiss, “The Eviction in Sheikh Jarrah: Protest in Jerusalem, Condemnation around the World,” *Ynet*, 3.8.2009 (Hebrew).

¹⁴⁹ A. Eldar, “US Demands Israel Not Evict Sheikh Jarrah Residents,” *Haaretz*, 19.4.2009 (Hebrew); B. Ravid, “Washington summons Israel envoy over East Jerusalem eviction,” *Haaretz*, 5.8.2009.

¹⁵⁰ B. Ravid, “Washington summons Israel envoy over East Jerusalem eviction,” *Haaretz*, 5.8.2009.

¹⁵¹ AFP, “UN Secretary-General to Israel: Stop the Provocations in East Jerusalem,” *Ynet*, 4.11.2009 (Hebrew).

¹⁵² Al-Jazeera, “East Jerusalem evictions condemned,” *El-Jazeera*, August 3, 2009, <http://english.aljazeera.net/news/middleeast/2009/08/200982141410746242.html>

¹⁵³ Eviction of Palestinian Families from Their Homes in Sheikh Jarrah: Statement of the French Ministry of Foreign Affairs: <http://www.ambafrance-il.org/article6909,6909.html>

¹⁵⁴ N. Mozgovaya and B. Ravid, “Clinton slams Israel for evicting Arab families from East Jerusalem,” *Haaretz* 3.8.2009.

denouncing Israel's move, saying that Israel's claim that the imposition of extremist Jewish settlers into this ancient Arab neighborhood is a matter for the courts or the municipality is unacceptable. The British statement went on to say that the eviction and similar actions contradict Israel's declarations regarding its desire to achieve peace with the Palestinians. The British statement also called on Israel not to allow extremists to control the government's agenda.¹⁵⁵ Egypt and Jordan also voiced criticism. The bureau chief of the Foreign Minister's office, Hossam Zaki, delivered the following harsh message to Israel's ambassador in Cairo, Shalom Cohen: "This is an act of dispossessing Arabs of their property... We demand that you stop the expulsion and oppression of Jerusalem Arabs... Any change on the ground in Jerusalem must be in the framework of peace talks with the Palestinian Authority without first establishing facts on the ground."¹⁵⁶ Jordanian Foreign Minister Nasser Judeh condemned the Israeli move and said that the Arab side sees East Jerusalem as occupied territory, in which every such action creates an obstacle and deserves condemnation, adding that he hopes they cease immediately.¹⁵⁷

The evicted Palestinian families drew international support and their protest tent became a popular site for visitors. For example, the US Consulate's political officer in charge of the Jerusalem desk, Kyler Kronmiller, visit the protest tent of the Hanoun and Ghawi families in July 2009 and told them that the US government is following the developments in Sheikh Jarrah with concern.¹⁵⁸ UNRWA representative Karin Abu-Zayd visited one of the families in December 2009 and called the situation a violation of international law, stressing that she rejects the Israeli argument that this is a private issue involving municipal and legal authorities.¹⁵⁹ Others who visited the evacuees to express their support for

¹⁵⁵ J. Beck and A. Selig, "US slams eviction of 2 Arab families in e. J'lem," *Jerusalem Post*, 2.8.2009.

¹⁵⁶ N. Mozgovaya and B. Ravid, "Clinton slams Israel for evicting Arab families from East Jerusalem," *Haaretz*, 3.8.2009.

¹⁵⁷ N. Mozgovaya and B. Ravid, "Clinton slams Israel for evicting Arab families from East Jerusalem," *Haaretz*, 3.8.2009.

¹⁵⁸ N. Hasson, "US Diplomat Visits Palestinians Who Received Orders of Eviction from Their Homes in East Jerusalem," *Haaretz*, 24.7.2009 (Hebrew).

¹⁵⁹ UN News Centre Home, "Israel's evictions in Jerusalem violate international law, says senior UN official," December 10, 2009: <http://www.un.org/apps/news/story.asp?NewsID=33210&Cr=palestin&Cr1=>

the struggle against eviction of families include British businessman, media and aviation mogul and a member of the Elders forum (a forum established by former South African President Nelson Mandela that includes prominent world leaders who are working for peace), Richard Branson,¹⁶⁰ as well as Irish folk singer Tommy Sands, who performed there.¹⁶¹

In response Israel offers two explanatory arguments: The first is a claim made by initiators of Jewish settlement in East Jerusalem and by government and municipal authorities that Arabs can also settle in West Jerusalem. This argument is based on a legitimate stance within a liberal multicultural democratic regime – a perspective that is seemingly color-blind with respect to settlement and mixed residential neighborhoods of various ethnic, religious, and national groups. Supporters of settlement argue that ethnically based residential segregation within a mixed city is morally unacceptable. They claim that Arabs are not prevented from purchasing properties in Jewish areas and that in fact hundreds of Arab families already reside in Jewish neighborhoods (many of these are Arab citizens of Israel). Prime Minister Benjamin Netanyahu also voiced this argument at the opening of the government meeting on 19 July 2009, when he said, “I would like to stress once again that a united Jerusalem is the capital of the Jewish people and the State of Israel. Our sovereignty over it is indisputable and this means, among other things, that the residents of Jerusalem can purchase apartments throughout all parts of the city. This was the policy of all of Israel’s governments and let me say that it is indeed being implemented because in the last few years hundreds of apartments in Jewish neighborhoods and in the west of the city were purchased or rented by Arab residents and we did not interfere. This means that nothing is prohibiting Arabs from buying apartments in West Jerusalem, and there is no prohibition on Jews buying or building apartments in East Jerusalem.”¹⁶² The writer Elie Weisel also came out in defense of the position of the government of

¹⁶⁰ N. Hasson, “British Millionaire in Support of Sheikh Jarrah Evacuees,” *Haaretz*, 28.8.2009 (Hebrew).

¹⁶¹ R. Medzini, “Friday Happening at Sheikh Jarrah: Vuvuzelas and Irish Folk Music,” *Ynet*, 19.6.2010: <http://www.ynet.co.il/articles/0,7340,L-3907223,00.html>. See also: <http://www.youtube.com/watch?v=l4kF1OBeTUo> (Hebrew).

¹⁶² Prime Minister Netanyahu’s remarks at the start of the government meeting, 19.7.2009: <http://www.sela.pmo.gov.il/PMO/Archive/Spokesman/2009/07/spokestart190709.htm> (Hebrew).

Israel. In a letter to US President Barack Obama in response to the president's criticism of Jewish settlement in East Jerusalem, Weisel wrote, "Jews, Christians, and Muslims can build their homes anywhere in the city."¹⁶³ Jerusalem Mayor Nir Barkat has posed a similar argument.¹⁶⁴

This argument, however, cannot be reconciled with the following three facts: First, Jerusalem is not a regular mixed city. Jews and Arabs reside within a fragile social fabric and in geographic and ethno-political segregation. The city embodies special sensitivities because of its holiness to followers of the three monotheistic religions – Judaism, Christianity and Islam – and because of its central place in the national ethos of two peoples and as a focus of international attention. It should be noted that the Supreme Court accepted the position of the state in the Burkan ruling (1978) regarding the residential segregation that has been customary in Jerusalem since the 11th century. In addition, in its responses to petitions against construction of the Jewish neighborhood of Har Khoma (1997), the state emphasized the importance of the delicate balance in the city and of avoiding the creation of bi-national neighborhoods.¹⁶⁵

In addition, the international community (including the United States) does not recognize Israeli sovereignty over East Jerusalem and rejects the claim that the issue is an internal Israeli legal matter because the territory in question is "occupied territory". The United Nations Security Council held that the annexation of East Jerusalem was not valid and that the Basic Law on Jerusalem (1980) is

¹⁶³ N. Mozgovaya, "Wiesel: For me, as a Jew, Jerusalem is above politics," *Haaretz*, 16.4.2010.

¹⁶⁴ See, for example, Tim Marshall, "Jerusalem Mayor Defiant Over New Settlements," *Sky News*, March 22, 2010: http://news.sky.com/skynews/Home/World-News/Israel-Jerusalem-Major-Nir-Barkat-Defiant-Over-Citys-Settlements/Article/201003415579431?lpos=World_News_First_Home_Article_Teaser_Region_2&lid=ARTICLE_15579431_Israel%3A_Jerusalem_Major_Nir_Barkat_Defiant_Over_C

¹⁶⁵ See the High Court of Justice Ruling 114/78 Muhammad Sa'id Burkan vs. The Minister of Finance, Piskey- Din 32 (2) 800 (Hebrew); the legal opinion of Attorney Meni Mazuz (deputy attorney general at the time) entitled "Ras al-Amud" of 1.12.99; and the document from the office of the Minister for Jerusalem Affairs Haim Ramon (who consulted legal experts) entitled "An Alternative to Cessation of Construction in Ras al-Amud" of 17.11.99.

“a violation of international law.”¹⁶⁶ Moreover, as stated in the Declaration of Principles signed by Israel and the PLO in September 1993, Jerusalem is one of the issues for Israeli-Palestinian negotiations towards a final status agreement. During the negotiations between Israel and the Palestinians under the leadership of Ehud Barak and Ehud Olmert, the parties accepted the principle established by US President Bill Clinton in December 2000 that Jewish neighborhoods in East Jerusalem would be under Israeli sovereignty and Arab neighborhoods in East Jerusalem would be under Palestinian sovereignty.¹⁶⁷

The second fact is that the Palestinian residents of East Jerusalem actually have no practical option for purchasing homes or lands in Jewish neighborhoods, and the number of Arab settlers in these neighborhoods is negligible. Most of these residents are apparently Israeli Arabs who were not originally residents of East Jerusalem and thus, as citizens of Israel, they have the right to purchase lands. Palestinians from East Jerusalem do not have Israeli citizenship, and under the standard leasing contract of Israel Land Administration they cannot purchase and take ownership of landed property (given their status as “foreign subjects” by definition and given that they are not citizens of Israel and are not entitled to new-immigrant status under the Law of Return, as defined in Article 19 of the contract available on the Israel Land Administration website).¹⁶⁸ The principle

¹⁶⁶ Security Council Resolution 478, of 20 August 1980, SCOR, 35th year, 1980, Resolutions, p. 14. See also Benvenisti and Zamir, *Private Property*, 24. See also R. Lapidot, *Jerusalem: Legal Aspects* (Jerusalem: Jerusalem Institute for Israel Studies, 1997) 2-18 (Hebrew).

¹⁶⁷ See Section B-4.

¹⁶⁸ Article 19 of the standard rental contract of the Israel Land Administration states: “Remedies for Breach of Contract

Without derogating from the right to other remedies, as per law and as per this contract, with respect to breach of contract, the parties hereby agree that every one of the breaches listed in clause (a) hereinafter shall be considered a material breach of the contract on the basis of which the lessor may terminate the contract through notification by registered mail:

(a) (1) Breach of any of the terms of Articles 9 and 14.

(2) If the lessee, without prior written permission from the lessor, changes or causes a change to the purpose or object of the rental lease or makes any use of the rental property that is not consistent with the purpose or object of the rental lease.

(3) If the lessee or his representative is a foreign national.

For the purposes of this clause, a “foreign national” is someone who is not one of the following:

according to which an Arab cannot purchase lands of the National Jewish Fund and the Jewish Agency was indeed overruled by the High Court of Justice in the case of ‘Adel Qa’dan in the town of Katzir,¹⁶⁹ (although actual implementation of the Court’s decision should be examined) and it is possible that this principle also holds with respect to Palestinian residents of East Jerusalem who are not citizens, but the principle has not yet been subject to legal scrutiny with respect to the purchase of lands in Jerusalem.

A third reason that the claim of color-blindness of settlement is irrelevant is that the construction in East Jerusalem intended for Jewish settlement is managed by Jewish organizations with a political agenda of settlement exclusively by ideological supporters and they are not receptive to Arab residents. For example, the project “Be’emuna” (in faith) in Jabel Mukabbar is defined as “a project intended for the national religious public.”¹⁷⁰ Moreover, in some of the Jewish settlements within Arab neighborhoods the Jewish organizations were granted ownership of

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- (a) A citizen of Israel;
 - (b) An immigrant under the 1950 Law of Return who did not make a declaration under Article 2 of the 1952 Nationality Law;
 - (c) A person entitled to an immigrant’s permit or immigrant’s certificate under the 1950 Law of Return who instead received authorization and a permit for temporary residence as a potential immigrant under the 1952 Entry into Israel Law.
 - (d) A corporation controlled by an individual who meets one of the definitions in clauses (a) – (c) above or by more than one such individual.

In this clause “controlled by” means holding – directly or indirectly, by an individual or single corporation or by more than one individual or corporation – 50% or more of the stated value of available stocks of the corporation or half or more of the voting power of the corporation or the right to appoint, directly or indirectly, half or more of the corporation’s directors.

Article (3) above shall not apply if the lessee receives such authorization in advance and in writing from the Chairman of the Israel Land Administration.

(4) If any of the preconditions or fundamental conditions of the preamble to this lease is breached.” [Unofficial translation]

See the Israel Land Administration website: http://www.mmi.gov.il/static/206_10.html [accessed: October 24, 2010] as well as N. Hasson, “In Contrast to PM Netanyahu’s Remarks: Arabs cannot buy homes in Jewish neighborhoods in the capital,” *Haaretz*, 21.7.2009 (Hebrew). This claim also appears in a document entitled “An Alternative to Cessation of Construction in Ras al-Amud” mentioned in note 165 above.

¹⁶⁹ High Court of Justice Ruling 6698/95 ‘Adel Qa’dan vs. Israel Land Administration, Ruling 54 (1) 258

¹⁷⁰ See <http://www.kipa.co.il/bemuna/project.asp?id=53>

the land by the Custodian of Absentee Property without any commercial tender and specifically for the purposes of Jewish settlement.¹⁷¹ It should be noted in this context that the Jewish Quarter in the Old City was declared a national Jewish heritage site in which Arabs cannot purchase apartments (including Arabs who lived there before 1967; see the case of Burkan), and the Israeli government has not declared a similar heritage site for Palestinian Arabs, Muslim or Christian.¹⁷² In addition, as noted, Palestinian residents of East Jerusalem cannot petition for the return of property they abandoned in 1948 in West Jerusalem. A Palestinian representative recently asked American mediator George Mitchell if, in light of Netanyahu's declaration, he could return to his home in the neighborhood of Katamon.¹⁷³

The second argument offered by the government is that this case involves a civil legal issue that has been subject to various forms of judicial review in Israel and the government cannot intervene.¹⁷⁴ In this context, as we shall see, the government has a variety of options for addressing the problem as well as the tools to prevent private parties and organizations from paralyzing it politically. Critics of Israeli policy within the international community do not accept the argument that this is an internal legal issue in which the government cannot intervene. Moreover, in their view East Jerusalem is not sovereign Israeli territory.

4. Undermining Israel's Diplomatic Achievements on the Issue of Jerusalem

Jewish settlement in Sheikh Jarrah could lead the international community and the Palestinian party to negotiations to retreat from the previously achieved

¹⁷¹ Paragraph 11(C) of the Klugman Report (1992) states, “There was no public tender for the transfer of property rights, and organizations and other private entities – both Jewish and Arab – were prevented from pursuing ownership rights.”

¹⁷² See High Court of Justice Ruling 114/78 Muhammad Sa’id Burkan vs. The Minister of Finance, Piskey-Din 32 (2) 800 (Hebrew); Zamir and Benvenisti, *Lands Acquired by Israelis*, 95-97.

¹⁷³ Conversation with Akiva Eldar, July 2010.

¹⁷⁴ A. Eldar, “US Demands Israel Not Evict Sheikh Jarrah Residents,” *Haaretz*, 19.4.2009 (Hebrew); B. Ravid, “Washington summons Israel envoy over East Jerusalem eviction,” *Haaretz*, 5.8.2009.

acceptance of the continued existence of Jewish neighborhoods across the Green Line within East Jerusalem, recognizing Israel's future sovereignty over these neighborhoods in the framework of a final status agreement, and acknowledging Israel's rights in the Holy Basin.

The Jewish neighborhoods that Israel built across the Green Line in East Jerusalem received implicit international recognition under the “Clinton parameters” of December 2000, which held that “Arab areas are Palestinian and Jewish ones are Israeli,”¹⁷⁵ but this recognition could be questioned as a result of the Sheikh Jarrah affair because it reinforces the tendency among international actors to link the dispute over Jewish settlement in this neighborhood with the dispute about construction in Jewish neighborhoods beyond the Green Line and sovereignty over the historic basin of the city. In the course of negotiations towards a final status agreement, the Palestinian delegation also accepted the solution that Clinton proposed regarding Jewish neighborhoods in East Jerusalem (“illegal settlements” from their point of view),¹⁷⁶ but Jewish settlement activities in Sheikh Jarrah and other Arab neighborhoods in East Jerusalem could cause them to shift their position towards a more militant stance that would view the principle posited by Clinton as no longer applicable.¹⁷⁷ It is noteworthy that the Palestinian party to negotiations has made clear in the past that the Clinton parameters do not apply to neighborhoods constructed by Israel after the Oslo Accords (such as Har Khoma).¹⁷⁸

As a result, Israel will presumably find it harder to achieve international acceptance of its most vital interest in Jerusalem – safeguarding Israeli interests in the Historic Basin (whether by means of sovereignty, an international solution,

¹⁷⁵ The “Clinton Parameters”; See M. Indyk *American Peace* (Tel Aviv: Am Oved, 2009) 424-428 (Hebrew).

¹⁷⁶ PLO representatives gave their consent to this at the Camp David Summit in July 2000 (see M. Indyk *American Peace* (Tel Aviv: Am Oved, 2009), 308) and the Taba talks in January 2001 (see Mortinos Document, Qurie, 354-355) and this was also the basis for the Geneva Initiative and for the peace plan that Ehud Olmert proposed to Abu Mazen towards the end of his term as prime minister of Israel.

¹⁷⁷ In this context, see A. Harel and N. Hasson, “Connecting the Dots: A map of Jewish settlement in East Jerusalem,” *Haaretz*, 8.5.2010 (Hebrew).

¹⁷⁸ M. Klein, *The Geneva Initiative: An Insider’s Account* (Jerusalem: Carmel, 2006), 141 (Hebrew). See also the Martinus Paper prepared at Taba (January 2001), Qurie, 354-355.

or other special arrangements). International acceptance of Israeli sovereignty over Jewish neighborhoods in East Jerusalem would also diminish. These consequences were apparent after the announcement of construction tenders in the neighborhoods of Ramat Shlomo and Gilo following the government announcement (in November 2009) of a ten-month freeze of construction in the West Bank settlements. The case of Ramat Shlomo illustrates how a seemingly simple administrative planning decision can create complications for Israel internationally, but it also demonstrates that Israel – if it wants – can take steps to prevent and stop these activities, which do more harm than good for the country. Indeed, massive international press coverage of the Sheikh Jarrah affair puts at risk the continued legitimacy of Israeli construction in Jewish neighborhoods in East Jerusalem.

We conclude that even though the initiators of ideological settlement in the heart of Arab neighborhoods are seeking to reinforce Israeli sovereignty in all parts of East Jerusalem, their activities could in actuality weaken this sovereignty and lead to loss of international support for continued construction in Jewish neighborhoods, something that did not spark strong opposition in the past.

Israeli President Shimon Peres addressed this point during a meeting with Rabbi Ovadia Yosef when he said, “If we build in Sheikh Jarrah, we will gain a few houses in Sheikh Jarrah and lose a few thousand houses throughout Jerusalem.” Peres said, “Wherever previous governments built, we can continue to build. But it would be a shame if a neighborhood such as Sheikh Jarrah were to disrupt and destroy the construction throughout Jerusalem.”¹⁷⁹ On another occasion Peres was quoted as saying, “The Netanyahu government violated the accepted status quo applicable to construction in East Jerusalem when it began approving Jewish construction in Arab neighborhoods in the city.” In March 2010, during a diplomatic crisis between Israel and the US, Peres proposed that Israel declare that construction in East Jerusalem would be restricted to Jewish neighborhoods only and that it would not allow construction for Jews in neighborhoods such as Sheikh Jarrah: “Previous governments, including those of Begin and Shamir, undertook construction in Jewish neighborhoods but refrained from building

¹⁷⁹ Y. Katz, “Rabbi Yosef: Construction in Jerusalem May Be Frozen,” *In Inner Chambers*, 22.4.2010. See: http://www.bhol.co.il/news_read.asp?id=16468&cat_id=1 (Hebrew).

in Arab neighborhoods, which is why the whole world acquiesced and the construction was not an obstacle to negotiations,” according to Peres.¹⁸⁰

5. Adding a Focal Point of Tension in Jerusalem

The eviction of the Palestinian families from Sheikh Jarrah and the announcement of the building plans of Jewish settlers’ organizations there led to increased tension and violence in the neighborhood. This affair is another in a list of focal points of tension in Arab neighborhoods within the city, and collectively they form focal points of security concerns and undermine the delicate balance in the city between the two nationalities. The following incidents testify to the increasing tension: In November 2009, following the denial of one of the Palestinian families’ petitions, dozens of Jewish activists arrived at the compound, accompanied by private security personnel, and demanded that the family leave.¹⁸¹ The police was on alert to treat the violent disturbance that followed. In March 2010 one of Jerusalem’s deputy mayors visited the site, which led to riots and Palestinian youths throwing stones at policemen.¹⁸² In October 2009 stones were thrown at Jewish worshippers on their way to pray at the tomb of Shimon HaTzadik. In December 2009 Jewish worshippers came to express solidarity with the settlers and attacked a Palestinian boy, who was rescued by Border Patrol police and transferred to a hospital.¹⁸³

The extremist nature of the Jewish settlers, whose actions exacerbate local tension, is evidenced in the Purim celebrations that took place in the neighborhood in March 2010. Participants were documented singing the praises

¹⁸⁰ B. Ravid and M. Mu’alem, “President Shimon Peres to Prime Minister Benjamin Netanyahu: Do not build in Arab neighborhoods in East Jerusalem,” *Haaretz*, 28.3.2010 (Hebrew).

¹⁸¹ N. Hasson, “Confrontation Between Settlers and Palestinians in Sheikh Jarrah in East Jerusalem,” *Haaretz*, 3.11.2009 (Hebrew).

¹⁸² Wafa, “Fury in Sheikh Jarrah: Deputy Mayor Hadari plans to open an office in the neighborhood,” *Wafa*, 9.3.2010: <http://hebrew.wafa.ps/index.php?action=detail&id=41275> (Hebrew).

¹⁸³ M. Wigenfeld, “Worshippers Attacked at the Tomb of Shimon HaTzadik,” *Haredim*, 8.8.2009: <http://www.haredim.co.il/ViewArticle.aspx?catID=1&itmID=1598> (Hebrew). N. Hasson, “Palestinian Child Attacked by Jews in Sheikh Jarrah,” *Haaretz* 18.12.2009 (Hebrew).

of Baruch Goldstein, who had massacred 29 Muslim worshippers in the Cave of the Worshippers in 1994.¹⁸⁴

The tension in Sheikh Jarrah was addressed in the Knesset Internal Affairs Committee, which discussed police conduct towards the demonstrators in Sheikh Jarrah and the escalating instances of stone-throwing in the neighborhood. Committee members visited the neighborhood and called upon the police to increase its presence there and to set up a permanent police presence.¹⁸⁵ It follows that continued eviction of Palestinian families and settlement of Jewish families in Sheikh Jarrah extols significant costs on the part of police and security forces. This conflict, which entails eviction of Palestinians from their homes through the massive use of security forces of the Israeli police, adds another significant point of friction to other tensions in a city as sensitive as Jerusalem and increases the possibility of political violence and acts of terrorism.

The social and security-related tension resulting from Jewish settlement activities in Sheikh Jarrah and eviction of Palestinian families adds a problematic point of friction that further threatens the delicate social fabric of Jerusalem. For example, in September 2010 and under similar circumstances violence erupted in the area of Jewish settlement in Silwan (City of David) when a settlement security guard was attacked and, in the course of defending himself, shot and killed a Palestinian resident, sparking riots in various parts of East Jerusalem.¹⁸⁶ A private security firm operates in Sheikh Jarrah as well, and it is conceivable that

¹⁸⁴ R. Medzini, "In Sheikh Jarrah as in Hebron: Goldstein, you're the best," *Ynet*, 4.3.2010: <http://www.ynet.co.il/articles/0,7340,L-3857630,00.html> (Hebrew).

¹⁸⁵ "Stormy Debate in International Affairs Committee on Police Violence Against Haredim," *Shas Party Website*, <http://www.shasnet.org.il/Front/NewsNet/searchingResult.asp?mFieldType=0&archive=%20%שומען%20%הצדיק> (Hebrew).

¹⁸⁶ N. Hasson and L. Kyzer, "Palestinian Shot to Death by Security Guard in Silwan," *Haaretz*, 22.9.2010 (Hebrew). This case revived public debate about the Ministry of Housing funding private security firms for Jewish settlements in Arab neighborhoods in East Jerusalem. Moreover, these security guards lack the training and authority that the police has. According to the September 2010 report of the Association for Civil Rights in Israel, the Ministry of Housing budget for 2010 included 54,540,000 New Israeli Shekels for private security firms that protected Jewish settlers in Arab neighborhoods in East Jerusalem. See The Association for Civil Rights in Israel, *Unsafe Space* (The Association for Civil Rights in Israel, September 2010) 12 (Hebrew).

incidents of this sort will be repeated in other places within East Jerusalem where a Jewish settlement exists in the heart of an Arab neighborhood.

It should be noted that Sheikh Jarrah is an exceptional case among settlements within Arab neighborhoods in Jerusalem because leftist Jewish activists, including individuals who had not been politically active previously,¹⁸⁷ participated in demonstrations against the Jewish settlement and the eviction of Palestinian families.¹⁸⁸ Since November 2009, a demonstration and march have taken place every Friday with the participation of Israeli protestors alongside neighborhood residents and activists from abroad who oppose the eviction of families. In addition, the events in Sheikh Jarrah have the potential to undermine the Municipality's efforts to attract tourists from throughout the world, potential residents, and students from all over the country. Frequent media reports on the confrontations, eviction of families, protests, hostility, international condemnation, and violence could (particularly among the secular public in Israel) reinforce the negative image of the city as a place of dispute and confrontation and thwart efforts to market it as a city of tolerance, culture, and tourism.

¹⁸⁷ The protestors were joined by well known public figures such as writer David Grossman, the Israel Prize laureate for poetry Haim Gouri, former minister Yossi Sarid, former Knesset member Avraham Burg, and Professor Avishai Margalit, Israel Prize laureate for philosophy.

¹⁸⁸ In this context, see N. Hasson, "In Sheikh Jarrah We Revived the Left," *Haaretz*, 6.8.2010 (Hebrew); N. N. Hasson, "Many Leaders of the Struggle Against Sheikh Jarrah Settlers Come from Religious Background," *Haaretz*, 25.6.2010 (Hebrew). The website of the protest organizers: <http://www.justjlm.org/>.

Part C – Options for Government Action

Israel's actions over the years with respect to Jewish settlement in the heart of Arab neighborhoods in East Jerusalem do not reflect a clear and consistent policy.

We recommend that the government consider formulating a clear policy on the matter of settlement in the heart of Arab neighborhoods in East Jerusalem and that, in its approach to the issue, the government take into account the implications of Jewish settlement in Sheikh Jarrah for the vital interests of the State of Israel, as detailed in this paper, and give consideration to the various courses of action available to it.

An Israeli government that is interested in avoiding a situation in which Jewish settlers' organizations establish facts on the ground that have the potential to cause diplomatic damage internationally does in fact have the legal and other tools to prevent such a reality. The government has both the discretion and the authority to take such action even in light of the relevant court rulings on property rights.

The courses of action available to the government are as follows:

First, the government, should it choose, could exercise its authority to expropriate properties (such as the disputed assets) for public purposes under the Land (Acquisition for Public Purposes) Ordinance (1943) and to pay the original owners damages by law. For example, during the 1970s, when the Hassan Bek (Bey) Mosque on the Jaffa-Tel Aviv border was sold to a private entrepreneur, the government expropriated the property of the mosque and returned it to the Muslim community.¹⁸⁹

This possibility of the use of expropriation for public purposes in order to prevent Jewish settlement in the heart of an Arab neighborhood in East Jerusalem was addressed in a legal opinion by then- Deputy Attorney General Meni Mazuz. Mazuz wrote the opinion following Jewish settlement in Ras al-Amud (on lands

¹⁸⁹ See N. Luz, *The Arab Community of Jaffa and the Hassan Bey Mosque. Collective Identity and Empowerment of the Arabs in Israel via Holy Places* (Jerusalem: Floersheimer Institute for Policy Study, 2005), 31-32 (Hebrew).

purchased by Jewish millionaire Irving Moskovitch), finding that the minister of finance has the authority to expropriate land for “public purposes” in order to prevent settlement activities there. Mazuz wrote that since 1967, much land has been expropriated in Jerusalem – most of it Arab – for the purposes of establishing new neighborhoods populated by Jews, and that the courts have clarified – in response to petitions regarding these expropriations – that construction plans must take into account the sensitivities of Jerusalem and their implications for public and political life.

Mazuz wrote further that the legal term “public purpose” in the context of the authority to expropriate is broad and that the government can justify expropriation of land in Ras al-Amud because of diplomatic and security implications of settlement there during a sensitive period of negotiations towards a final status agreement and because of “the attempt to dictate a political agenda under the guise of legitimate construction by the property owner.” Mazuz found that the government could argue that through the expropriation it seeks “to prevent the creation of new points of friction and to preserve for itself political freedom of action at this political sensitive time, as well as to prevent a single individual, and particularly a foreign citizen, from restricting government maneuverability and dictating terms with long-term political and diplomatic implications.”

“It is inconceivable,” Mazuz wrote, “that the government would be authorized to expropriate land for cultural purposes... for environmental purposes... or for reasons of preventing unemployment... but would not be authorized to expropriate land for political reasons. When the government position is that certain private activities could have severe consequences political and for public order, then it cannot remain helpless to act.”¹⁹⁰

The government could also help through payment of compensatory damages to Palestinian families affected negatively by the settlers’ organization or, alternatively, to ensure them appropriate housing.

Second, the government could instruct the Israel Police – in accordance with the legal opinions issued in the past by two attorney generals – to prevent the

¹⁹⁰ Legal Opinion of Attorney Meni Mazuz (then-deputy attorney general) entitled “Ras al-Amud” of 1.12.99 (Hebrew).

occupation of a legally purchased home if there is concern about harm to public safety and public order (and there is usually room for such concern when families are being evicted from their homes in East Jerusalem and Jews are moving into the heart of an Arab neighborhood).

In the context of the organization EL'AD's settlement activities in Silwan in 1991 (during the Shamir government), then-Attorney General Yosef Harish issued a legal opinion for the High Court of Justice finding that property rights are not of absolute value and that they might conflict with other fundamental values such as preservation of public order and prevention of violence or riots. Harish argued that "in cases such as these, the two values must be balanced" and wrote that if the police reach a "clear and verified" conclusion that implementation of these rights would almost certainly endanger public welfare, then "it has the authority to refuse to assist in the immediate implementation of ownership rights over the place." Harish even argued that if the expected danger is great and there are insufficient forces to prevent it, then "[the police] has the authority and perhaps even the duty to prevent the owners from implementing their rights."¹⁹¹

We can cite another example from the time of the previous Netanyahu government during 1996-1999. In September 1997, after a group of Jewish settlers took possession of homes in the neighborhood of Ras al-Amud (with funding provided by American millionaire Irving Moskowitz) and after the Municipality of Jerusalem approved the plan for Jewish construction in the neighborhood, Netanyahu dissociated himself from the plan, termed the action "damaging to Jerusalem and to Israel," and made clear to the United States, the PLO, and Egypt that he would not permit construction in this neighborhood.¹⁹² This position resulted, among other reasons, from concerns that such a step would aggravate relations with the United States and undermine the political negotiating process, as well as concerns about an outbreak of Palestinian violence.¹⁹³ Netanyahu even initiated a consultation meeting with security and legal experts in order to identify

¹⁹¹ Letter from the attorney general to the chief of police – High Court of Justice Opinion 4747/91 EL'AD vs. The Chief of Police et al. Supreme Court 24 November 1991 (Hebrew).

¹⁹² Berkovitz, 194. D. Naveh, *Government Secrets*, (Tel Aviv: Miskal, 1999) 85-87 (Hebrew).

¹⁹³ Naveh, 85-87. Berkovitz, 193-195. It should be noted that a year earlier, in September 1996, riots erupted over the opening of the Western Wall tunnel.

ways of handling the problem. Then-Attorney General Elyakim Rubinstein held (as Yosef Harish had earlier) that in cases of “near certainty of public disorder and endangerment of public safety” it is permissible to prevent tenants’ moving into a residence even if it was legally purchased.”¹⁹⁴ Netanyahu wanted to avoid forcible eviction of the Jewish families that had settled there, and he eventually reached an agreement with the organization Ateret Cohanim according to which the families would evacuate the homes into which they had moved but a group of yeshiva students would remain to watch over and maintain the place.¹⁹⁵

It should be noted that Rabbi Ovadia Yosef, the spiritual leader of Shas, also expressed reservations about the families moving into Ras al-Amud and stated that “it is the right of every Jew to reside anywhere in the Land of Israel, but no Jew has the right to endanger the lives of the many.”¹⁹⁶

Third, with respect to the future, an amendment to the 1970 Legal and Administrative Matters (Regulation) Law [Consolidated Version] (the law that required the Custodian General to release Jewish properties in East Jerusalem to their original owners) could be passed, granting the Custodian General broad discretion regarding the release of properties in East Jerusalem. As mentioned, broad discretion had been granted to the Custodian of Absentee Property in the past.

Fourth, the government and the Municipality of Jerusalem could put a stop to the planning and construction of housing units in Arab neighborhoods at the initiative of Jewish settlement organizations. During the first Netanyahu administration, for example, following the public outcry that erupted over Jewish settlement in Ras al-Amud, Netanyahu issued instructions stating that any construction for Jewish housing in areas of dense Arab population would require his personal authorization. In mid-1998, however, Netanyahu reversed this order and returned

¹⁹⁴ Berkovitz, 194.

¹⁹⁵ Naveh, 86. Danny Naveh (Likud), government secretary at the time (and eventually minister of health), also wrote, regarding this issue, that he “supports the rights of Jews to settle anywhere in Jerusalem, but this must be done quietly and not through demonstrative activities that cause more harm than good to Jerusalem.”

¹⁹⁶ Naveh, 86.

the decision-making authority to the Municipality of Jerusalem, which has significant control over the local planning and construction council.¹⁹⁷ During the Olmert administration, similar steps were taken to strengthen government oversight over new construction in East Jerusalem, and an order was issued according to which new construction in the eastern part of the city required prime ministerial authorization.¹⁹⁸

Fifth, various government actions reflect support for efforts at settlement in Arab neighborhoods.¹⁹⁹ The government could consider whether to continue providing assistance and support in situations where doing so is not in harmony with Israel's policy and interests.

¹⁹⁷ Klein, Doves over *Jerusalem's Sky*, 199. N. Shragai, "Netanyahu Permits East Jerusalem Houses to Be Inhabited Without His Prior Approval," *Haaretz*, 11.6.1998 (Hebrew).

¹⁹⁸ N. Shragai, "Senior Source in the Ministry of Housing: All construction in East Jerusalem requires PM approval," *Haaretz*, 22.1.2008 (Hebrew); B. Ravid, "Olmert: Only the Government Can Approve New Construction in East Jerusalem," *Haaretz*, 30.12.2007 (Hebrew).

¹⁹⁹ For example, the financial support of the Ministry of Housing for private security firms that protect Jewish settlement compounds in East Jerusalem. Additional examples of government support were presented in the Klugman Committee report (1992).

Conclusions

This paper aims to assist decision makers in considering all the aspects of settlement in Sheikh Jarrah as they seek to formulate a policy on the issue.

Jewish settlement in the neighborhood of Sheikh Jarrah, which includes the eviction of Palestinian families from property that had been Jewish-owned before 1948, could threaten vital Israeli interests. Ideologically driven organizations have been taking advantage of legal and proprietary proceedings and they have the potential to push the government and the State of Israel into a position that conflicts with the interests of the state and the policies of the government and has the potential to undermine the strategic interests of the state and its citizens.

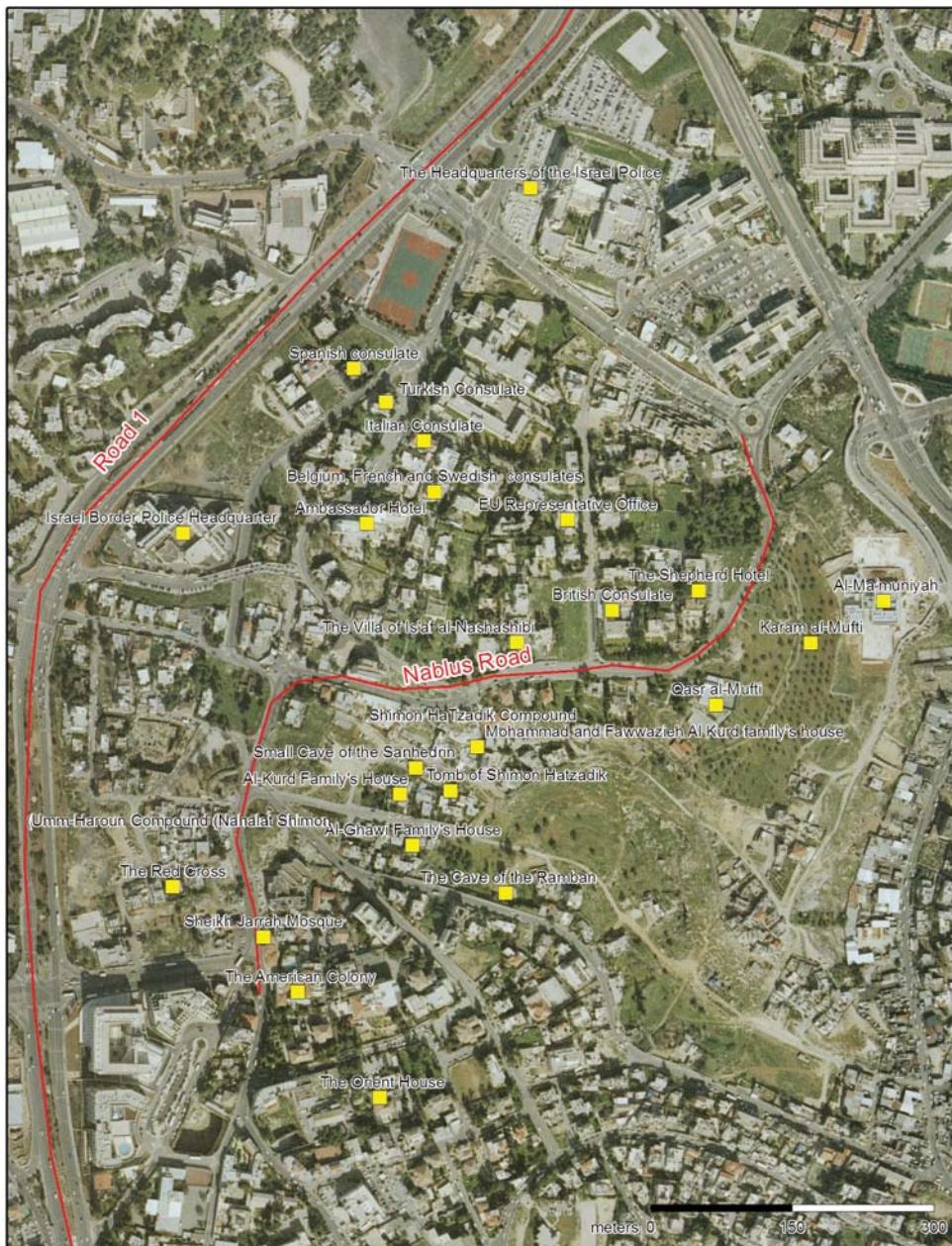
These settlement activities have possible strategic implications for the State of Israel and the price that Israel is likely to pay on a number of fronts: potential demands for legal restitution of property that was Palestinian-owned before 1948; restricting the government's freedom of action regarding future agreements; the potential creation of an additional barrier to political negotiations over the future of Jerusalem; further erosion of the State of Israel's legitimacy (and its control over Jerusalem) within the international community; a possible threat to Israel's interests in Jewish neighborhoods beyond the Green Line and with respect to its status in the Historic Basin; the creation of focal points of friction and social tension within Jerusalem; and a possible blow to image of the city.

It is inconceivable that these implications for Israel's interests be actualized by private entities before the government has examined their consequences. The government should formulate a clear policy addressing the practice of Jewish settlement in the heart of Arab neighborhoods, taking into consideration the implications described in this paper. Despite the legal aspects of property rights and the court rulings on the matter, the government has the necessary tools to take action, should it opt to act.

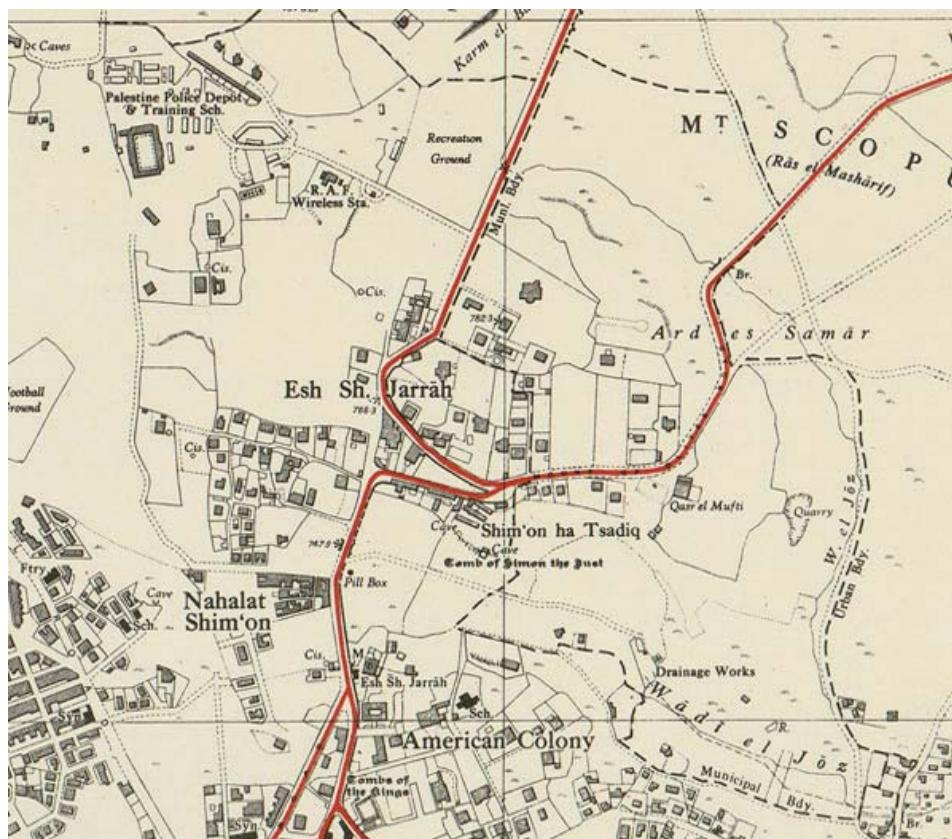
Annexes

1. Aerial photograph of the neighborhood of Sheikh Jarrah and compound of Shimon HaTzadik showing main sites in the neighborhood
2. Map of the neighborhoods of Sheikh Jarrah and Shimon HaTzadik from the British Mandate period, 1947
3. A photograph from Sheikh Jarrah during World War I
4. Map of the Arab neighborhoods in West Jerusalem until 1948; Table of statistics from Dr. Adnan Abdel Razek's book about Palestinian property in East Jerusalem
5. Agreement between UNRWA and Jordan on the establishment of a residence for refugees in Sheikh Jarrah
6. The refugee residential compound built by UNRWA in Sheikh Jarrah and three homes of Palestinian families who were evicted (Al-Kurd, Ghawi, and Hanoun)
7. Rental Agreement of Palestinian tenants in the refugee residential compound
8. The tomob of Shimon HaTzadik
9. Small Cave of the Sanhedrin
10. The Cave of the Ramban / Megharat al-Nakta
11. The Kollel at Shimon HaTzadik compound
12. Sheikh Jarrah Mosque
13. Orient House (the villa built by Ismail Bey al-Husayni)
14. The villa of Is'af al-Nashashibi
15. The Shepherd Hotel
16. The American Colony (the villa of Rabbah Effendi al-Husayni)
17. Entrance to the Shimon HaTzadik compound in Sheikh Jarrah
18. A monument to the victims of the Mount Scopus Convoy
19. Table summarizing Jewish settlement in Arab neighborhoods in East Jerusalem

Annex 1. Aerial photograph of the neighborhood of Shiekh Jarrah and compound of Shimon HaTzadik showing main sites in the neighborhood



Annex 2. Map of the neighborhoods of Sheikh Jarrah and Shimon HaTzadik from the British Mandate period, 1947



Annex 3. A photograph from Sheikh Jarrah during World War I



See: <http://www.palestinremembered.com>

Annex 4. Map of the Arab neighborhoods in West Jerusalem until 1948

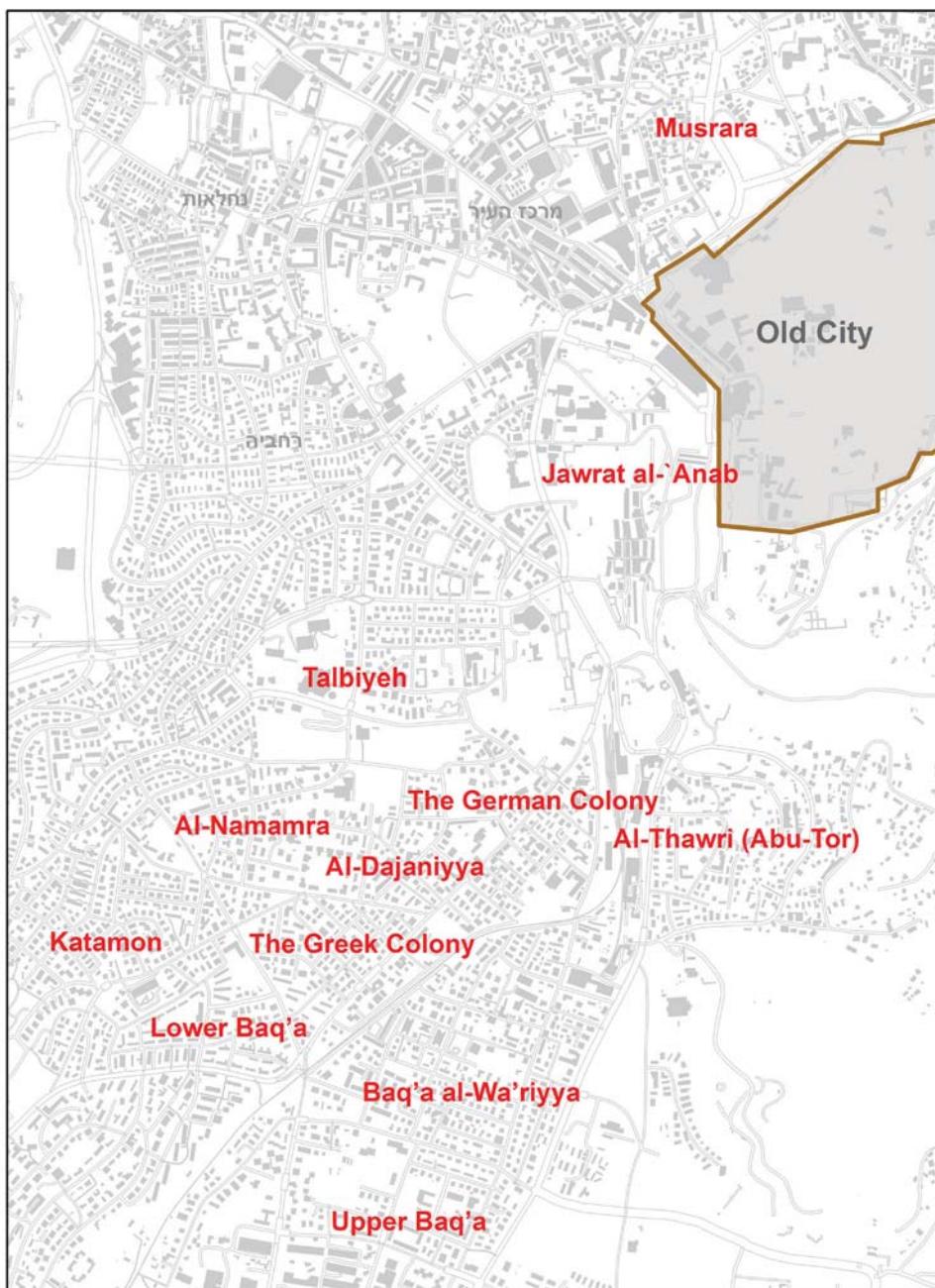


Table of statistics from Dr. Adnan Abdel Razek's book about Palestinian property in East Jerusalem

Name of Neighborhood (Arab neighborhoods where most or all of the territory was Arab-owned)	Territory owned by Arabs in the neighborhood (in dunams, rounded off and adapted from the original)	Number of Houses
Upper Baq'a (area of Talpiot)	1,232	143
Lower Baq'a (near Katamon)	290	102
Katamon	571	224
The Greek Colony	54	63
Al-Namamra (between the German Colony and Katamon)	218	45
Al-Dajaniyya (near the German Colony)	133	85
The German Colony	107	44
Baq'a al-Wa'riyya (near Hebron Road and Geulim neighborhood)	1,001	177
Al-Thawri (Abu-Tor)	355	101
Talbiyeh	482	67
Jawrat al-'Anab (between the western outer wall of the Old City and the neighborhoods of Yemin Moshe and Mamilla)	60	54
Total	4,503	

Annex 5. Agreement between UNRWA and Jordan on the establishment of a residence for refugees in Sheikh Jarrah

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AGREEMENT BETWEEN
THE HASHHEMITE KINGDOM OF JORDAN
AND
THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR
PALESTINE REFUGEES IN THE NEAR EAST
FOR
AN URBAN HOUSING PROJECT AT
SHEIKH JARRAH QUARTER, JERUSALEM

Project No. J/UH/102

WHEREAS the Hashemite Kingdom of Jordan (hereinafter referred to as the Government) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as the Agency) have entered into a programme agreement for the provision of rehabilitation and self-support opportunities for refugees now in receipt of United Nations relief; and,

WHEREAS it has become evident that there exist a large number of small entrepreneurs, tradesmen, and office workers who by virtue of their employment have become partially self-supporting but while making comparatively adequate income are paying high rents, the saving of which would constitute sufficient addition to their income to warrant their removal from the Agency ration rolls;

IT IS HEREBY agreed between the Government represented by His Excellency the Minister of Development on the one part, and the Agency represented by the UNRWA Representative to Jordan on the other part, that a project be undertaken to provide housing accommodation for twenty eight families in Jerusalem in accordance with the following provisions:-

I. DESCRIPTION OF PROJECT

1. An urban housing project consisting of housing accommodation for twenty eight families now in receipt of Agency relief will be undertaken as a means of enabling these refugees through savings in rent to become self-supporting members of the community.

2. Two single and thirteen twin housing units will be constructed in the Sheikh Jarrah Quarter of Jerusalem on formerly Jewish property leased by the Custodian of Enemy Property to the Ministry of Development, for the purpose of this project.

3. Each refugee family participating in the project will conclude a lease agreement as set out in Appendix II.

4. A nominal rent of one Jordan Dinar per year shall be paid to the lessor which is the Ministry of Economy and Development (hereinafter referred to as the Ministry) by each refugee family to be used to cover maintenance expenses or other charges connected with improvements made to the project by the Ministry.

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5. Each dwelling unit will provide a covered area of 60 square meters consisting of two rooms plus a small entrance, kitchen and lavatory with sanitary conveniences. The unit will be constructed of coarsened masonry backed with concrete and with reinforced concrete roof. A dwelling site of a minimum of 350 square meter will be provided for each house.

6. Domestic water will be provided from the municipal mains which run adjacent to the building site permitting the equipment of each dwelling unit with four running points. Drainage will be connected to the municipal main sewage system.

7. Each dwelling unit will be equipped with an internal lighting system with one lighting point in each room but no provision will be made for connection to the municipal mains under this project agreement. Extension of exterior lines to each housing unit may be undertaken at either the joint or single expense of the tenant and the municipal electric company.

8. The building site is located 200 meters east of the main Ramallah-Jerusalem road so no special access roads will be constructed at this time. The Jerusalem Municipality has completed designing for access roads of approximately 600 meters which it plans to construct at its expense at the earliest possible opportunity.

II. PLAN OF OPERATIONS

1. The selection of refugee families for the project shall be undertaken by the Administrative and Technical Staff of the Ministry of Development operating under the general authority of the Government Central Committee for the Regulation of Agriculture, Housing, and Industry. The Agency shall be represented in the Selection Committee by a representative possessing powers equal to those of the other members of the Committee. Selection shall be by unanimous vote of the Committee.

2. The following principles shall obtain in the selection of families as project beneficiaries:

- (a) Only refugee families who are valid recipients of Agency relief at the time of selection and entry into the project shall be chosen.
- (b) Refugee families shall be selected from employed refugees in possession of a regular income but whose present net income is insufficient to render the family self-supporting without the benefit of savings in rent which will result from the provision of a housing unit under this project agreement.
- (c) Refugee families shall be chosen from those most likely on the basis of reports of their past conduct and their general reputation to be citizens of good behaviour and to maintain

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their houses and land plots in clean and attractive condition in conformance with requirements and standards set by the Municipality.

- (d) The number of refugees per family shall be not less than four and not more than eight, with an average per dwelling unit of not less than six.
- (e) Whenever possible and within the limits set by the above principles of selection, refugee tenants shall be chosen from those presently residing in Jerusalem and districts adjacent to the housing site.

3. The period of lease shall be initially three years and three months, which period shall be considered a probationary period, in accordance with the terms and conditions of the lease agreement attached as Appendix II.

If after the lapse of the said three years and three months, the tenant shall have fulfilled all the terms and conditions of the lease agreement to the satisfaction of the lessor, he shall have the right to renew the lease agreement on the same terms and conditions as are set out in Appendix II except that the period of lease shall be 30 years less three months from the date of such renewal, which shall in turn be renewable for a further period thereafter of 33 years, at the option of the tenant subject to the same terms and conditions.

III. REMOVAL OF REFUGEE BENEFICIARIES FROM UNITED NATIONS RELIEF

1. It is agreed that the provision of housing under the terms of this agreement will enable each refugee family participating in the project to become self-supporting within a period of not more than three months from the date of the family's entry into the house.

2. The issue of United Nations relief to families participating in this project shall be terminated by the Agency not later than three months following the signature of the lease agreement above referred to as Appendix II.

3. His Excellency the Minister of Development shall furnish the UNRWA Representative, Jordan with the names and ration card numbers of the selected refugee families, together with the dates of their entry into the housing units so that appropriate arrangements may be made to terminate United Nations relief following the agreed upon interval.

4. Prior to selection, eligibility with respect to valid ration entitlement of applicants will be referred to the Agency for verification. In no case will entry of the project beneficiaries to the housing units for purposes of occupancy be permitted prior to the transmittal to the Agency of the names and ration card numbers of the beneficiary families and written confirmation by the Agency of bona fide refugee status.

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5. The number of refugees to be removed from Agency relief rolls as a result of funds furnished under the terms of this agreement shall be not less than one hundred and sixty eight.

IV. ADMINISTRATION AND FINANCING

1. The execution of this project shall be under the authority of the Ministry of Development and the administrative responsibility of the Director of the Administrative and Technical Staff, operating under the principles and procedures set down in Section I, sub sections 2 and 3 of the Addendum to the Project Agreement for that Staff (Project J/RE/112) signed and dated 25 March 1954. Any problem arising during or after the execution of the project shall fall under the administrative responsibility of the Ministry.

2. The Agency will make available from the \$ 11 million self-support fund a sum not to exceed \$ 55,636.- (or its equivalent in Jordan Dinars) for the purpose of executing this project in accordance with the attached budget estimates detailed in Appendix I.

3. The assets created by this project agreement shall be vested in the project beneficiaries in accordance with the terms of the Tenants' Lease Agreement attached as Appendix II.

4. All employment connected with or arising out of the execution of this project shall, whenever possible, be given to refugees currently in receipt of Agency relief and in accordance with the general provisions (and specific provisions where they apply) of the standard Agency clause for contract labour attached as Appendix III.

5. Supplies, equipment and material for the project may be purchased or issued by the Agency as required, on behalf of the Director of the Administrative and Technical Staff.

6. Agency funds will be made available to the Ministry of Finance for the Ministry of Development for the purpose of implementing this project and shall be expended only for the purposes set forth in this Project Agreement.

7. All net savings of funds and the value of stores and equipment remaining upon completion of this project shall be recrated to the \$ 11 million dollar refugee self-support fund. Any balance of allotments held by the Ministry of Finance upon completion of this project shall be refundable to the Agency.

V. LEGAL ASPECTS

All legal aspects protecting the rights and privileges of the several parties concerned are established by signature of the concerned parties to this Project Agreement and by the Tenants' Lease Agreement attached as Appendix II. It is declared and confirmed that the lease agreement above referred to attached as Appendix II is made without any reference to or relation with Regulation No. 3 of 1952, "Regulation for the Development of Agriculture, Industry and Housing for the year 1952".

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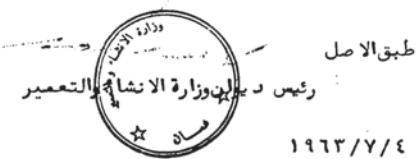
IN WITNESS WHEREOF, the parties hereto have caused this Project Agreement to be approved by their duly authorised representatives at Amman, Jordan, on 16th November 1954.

On behalf of the Hashemite Kingdom of Jordan.

(Sgd) Khujoussi El-Khairy
MINISTER OF DEVELOPMENT

On behalf of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

(Sgd) W.T. Clark
UNRWA REPRESENTATIVE,
JORDAN

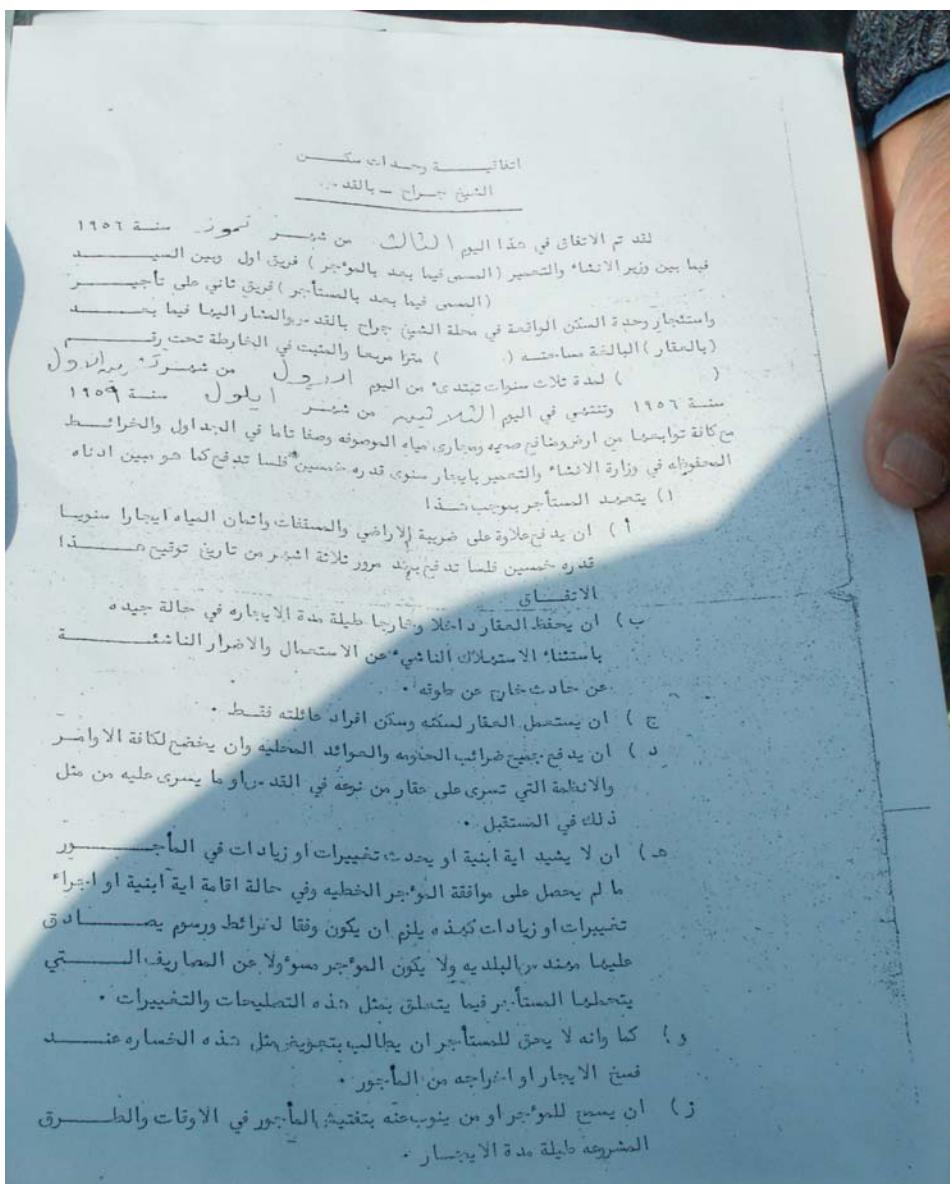


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Annex 6. The refugee residential compound built by UNRWA in Sheikh Jarrah and three homes of Palestinian families who were evicted (Al-Kurd, Ghawi, and Hanoun)



Annex 7. Rental Agreement of Palestinian tenants in the refugee residential compound



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- وقد تحدث كل من الفريقين بدورهما، فإذا أطلق ما يلي -

يمشى توقيع المستأجر على هذا العقد اتفاقاً منه بأنه تسلم المتراعيله .

منذ الابيارة ثلاثة شهوراً بعد مرور الشهادة الاخير الاولى من تاريخ توقيع الاعماري .

لا يحق للمستأجر او اي فرد من افراد عائلته ان يتسلل من اي حق من حقوق الاجسازه .

لابد من شفاعة اشرافه ورثته الشرفيين وهذا يسرى على ورثته من بعده كما انه لا يحق له ان يرضي الودعه لاتية بحفلة كانت .

ان لا يقع المستأجر ب اي حفل يخل بالآمن العام وحسن الاخلاق او بصلة الحارفين له .

يتوجه على مستأجر كل وحدة ان يضع مكتبة حول وحدته الامر الذي يوازن بدينه .

الاعتبار عند توقيعه لوحدة باسم مستأجرها بعد مرت السنوات الثلاث .

يجوز للمؤجر استئجار المأجور من المستأجر في حالة تكرر مخالفات المستأجر مسوقة .

هذا الاتفاق يمد اذاره خطياً ثلاثة مرات على ان لا تغل الددة التي تحمل الاستئجار عن الاخر شهراً واحداً وفي هذه الحالة لا يحق له الطالبية باى تمويهاً او استرداد ما كان دفعه من الاجسor .

يضم المستأجر طبقاً مدة الابيارة اي غير حدث في المأجور نتيجة اهماله وتقدير قيمة الفضول ممثلاً بوزارة الانشأ والتصغير الذي يعتبر ثرة قطعها يمد انتقامه بموافقة المؤجر .

تقطن بطاقة موطن المستأجر وافراد عائلته بعد مرور الاشهر الثلاث الاولى التي تسبق سنوات الابيارة .

اذا اخلق المستأجر المأجور في اي وقت من الاوقات ولا يسبب كان بما في ذلك المسودة الى مكان اقامته الاصلي في فلسطين ففيما يهدى المأجور الى الحكومة لا يحق للمستأجر العطالية باى مبلغ كان قد دفعه من الاجسor .

اذا اضر المتأجر بغير سباب فاضحة ان يترك محل اقامته لفترة من الزمن ويجب عليه الحصول على موافقة وزارة الانشأ والتحميس على ذلك .

بعد ان يكون المستأجر قد قام بمحض مسوقة لهذا الاتفاق وفتح المأجور ببيان المستاجر ساهم في بناً يجتمع الوجه تعيش طلبة المأجور الى المستأجر بجانا .

ان هذا الاتفاق لا يوثب باى شكل من الاشكال على حقوق المستأجر في عودته الى الاصلي (فلسطين) وفي اي دولة يعيش من مخالفاته فيها او على اية حقوق مياسيست او اعتماده وثيقها من الحقوق التي يعتبرها المستأجر حناته ويرثب في ممارسته في اي وقت شاء .

واثماراً بذلك وقوع كل من الفريقين على هذا الاتفاق .

فريقي الأول

فہریق نائیں

الدُّوَيْجَر

Annex 8. The tomob of Shimon HaTzadik



Annex 9. Small Cave of the Sanhedrin



Annex 10. The Cave of the Ramban / Megharat al-Nakta



Annex 11. The Kollel at Shimon HaTzadik compound



Annex 12. Sheikh Jarrah Mosque



Annex 13. Orient House (the villa built by Ismail Bey al-Husayni)



Annex 14. The villa of Is'af al-Nashashibi



Annex 15. The Shepherd Hotel



Annex 16. The American Colony (the villa of Rabbah Effendi al-Husayni)



Annex 17. Entrance to the Shimon HaTzadik compound in Sheikh Jarrah



Annex 18. A monument to the victims of the Mount Scopus Convoy



Annex 19. Table summarizing Jewish settlement in Arab neighborhoods in East Jerusalem

Arab neighborhood	Actual Jewish settlement and planned settlement
Sheikh Jarrah	<p>“Shimon HaTzadik” Compound Today 18 families and 2 bachelors live here. In August 2008 “Nahalat Shimon International” filed Town Plan Scheme 12705, which aims to build 200 housing units and destroy the Palestinian structures in the place.¹</p> <p>The Shepherd Hotel The property was purchased in 1985. In 2010 a plan to construct 20 housing units received final approval. The plan had been submitted by “C and M Property,” which is owned by Irving Moskovich. An additional plan to construct 90 more housing units was cancelled.²</p> <p>Additional contingency plans: a plan to evict Palestinian families in Umm-Haroun and construct housing units instead;³ a plan to build a conference center, “Beit Amana;” a plan to construct a facility for “Or Sameakh” Yeshiva; and possible construction in the compound known as “Karam al-Mufti.”</p>
Silwan	<p>City of David Jewish settlement in Silwan began in 1991 with efforts led by the organization EL’AD. Today approximately 70 Jewish families live in the neighborhood.⁴</p> <p>Beit Yehonatan A seven-story building housing seven families. It was built without a permit for the organization “Ateret Cohanim.” The District Court of Jerusalem ordered that the tenants be removed and the building sealed.⁵</p> <p>Additional settlement locations: “Beit HaDvash,” “Beit HaTira” (Bayt ‘Abassi), the Yeminite Synagogue.⁶</p>

Arab neighborhood	Actual Jewish settlement and planned settlement
A-Tor / Mount Olives	<p>“Beit HaKhoshen,” “Beit Ha’Orot”</p> <p>In January 2010, a plan to construct 24 housing units in “Beit Orot” was approved.⁷</p> <p>A Jewish settlement site also exists in the cemetery compound on Mount Olives.⁸</p>
Jabel Mukabbar / Arab al-Sawahra	<p>“Nof Zion”</p> <p>During the first phase of the project, 90 housing units were built. Today approximately 15 families live in the place. In November 2009 a cornerstone for further construction was laid.</p> <p>The project plan (phases A, B, and C) include a neighborhood of approximately 400 housing units, a commercial center, and a hotel.⁹</p>
Abu Dis	<p>“Be’Emuna”</p> <p>A project of the organization “Be’Emuna” intended for the national-religious community, the plan is to build approximately 60 housing units in three structures.</p> <p>The project is entitled “Armon HaNatziv” after (the initials of the late righteous) Rabbi Naftali Tzvi Yehuda Berlin.¹⁰</p>
	<p>“Kidmat Zion”</p> <p>Today a number of Jewish families live here. Since 2000 there have been efforts to promote a plan for the construction of a neighborhood to include 230 housing units.¹¹</p>

Arab neighborhood	Actual Jewish settlement and planned settlement
Ras al-Amud	<p>“Ma’ale HaZeitim” Settlement began in 1997. Today approximately 50 families live in the compound and another 60 housing units are being built.¹²</p>
	<p>“Ma’ale David” In 2008 the “Bukhari Community Trust/Council” submitted a plan for the construction of approximately 100 housing units (seven structures) in a compound that had previously housed the Judea and Samaria district police headquarters. The plan proposes a bridge connecting “Ma’ale David” and “Ma’ale HaZeitim.”¹³</p>
Anata	<p>“Sha’ar Zion” A contingency plan for the construction of a neighborhood with 2,000 housing units.¹⁴</p>
The Muslim Quarter and the Jewish Quarter	<p>Jewish settlement in the Muslim Quarter began in the 1980s. Today approximately 80 families and 500 yeshiva students reside there.</p>

¹ See, in this context, A. Eldar, “Court: Palestinians Shall Evacuate Homes in Sheikh Jarrah,” *Haaretz*, 18.5.2009 (Hebrew); M. Rappaport, “Right-Wing Organization Planning to Build Additional Jewish Neighborhood in East Jerusalem,” *Haaretz*, 29.1.2008 (Hebrew).

² N. Hasson and B. Ravid, “Construction at Shepherd Hotel in East Jerusalem Approved,” *Haaretz*, 24.3.2010 (Hebrew). See also: Municipality of Jerusalem Press Release on the Shepherd Hotel Compound, 19 July 2009 (Hebrew).

³ A. Meniv, “The Next Storm? Arab Home to Be Destroyed to Enable Jewish Residence,” *Jerusalem Times*, 23.7.2010 (Hebrew). N. Hasson, “New Supreme Court Ruling Permits Eviction of Dozens More Families from Sheikh Jarrah,” *Haaretz*, 28.9.2010 (Hebrew).

⁴ R. Medazini, “East Jerusalem Rebuilt: Where is the next confrontation hidden?” *Ynet*, <http://www.ynet.co.il/articles/0,7340,L-3808016,00.html> (Hebrew).

⁵ M. Rappaport, “Corrective Discrimination,” *Haaretz*, 12.6.2007 (Hebrew). N. Hasson, “Tenants’ Petition Not to Close Beit Yehonatan in Silwan, East Jerusalem, Denied,” *Haaretz*, 25.5.2010 (Hebrew).

- ⁶ N. Hasson, "Yemenite Synagogue in the Heart of Silwan Kasbah," *Haaretz*, 24.6.2010 (Hebrew). N. Hasson, "Prolonged Seige of Silwan Jews," *Haaretz*, 17.3.2010.
- ⁷ Y. Ettinger, "Jerusalem Municipality Approved Construction of Four New Buildings in Beit Orot Yeshiva in East Jerusalem," *Haaretz*, 5.1.2010 (Hebrew). S. Yerushalmi, "Division of Jerusalem: For better or worse, impossible," *NRG*, 25.7.2009 (Hebrew).
- ⁸ N. Shragai, "Stronghold Established in Ancient Mount Olives Cemetery As Well," *Haaretz*, 3.4.2003 (Hebrew).
- ⁹ N. Hasson, "Cornerstone Laid for Expansion of 'Nof Zion' Neighborhood in East Jerusalem," *Haaretz*, 18.11.2009 (Hebrew); G. Yemin, "Nof Zion: Foreign residents purchased 30 apartments for 9 million dollars," *Globes*, 20.3.2005 (Hebrew). A. Shauli, "If Corporate Bond Holders Act Reasonably, They Will See Their Funds," *Globes*, 22.7.2010; R. Medzini, "East Jerusalem Rebuilt: Where is the next confrontation hidden?" *Ynet*, <http://www.ynet.co.il/articles/0,7340,L-3808016,00.html> (Hebrew); The neighborhood's sales office: <http://www.nofzion.co.il/defaultHe.asp>
- ¹⁰ See <http://www.kipa.co.il/bemuna/project.asp?id=53>
- A. Eldar, "New Settlement in Palestinian Neighborhood in East Jerusalem," *Haaretz*, 27.4.2009 (Hebrew).
- ¹¹ S. Yerushalmi, "Division of Jerusalem: For better or worse, impossible," *NRG*, 25.7.2009 (Hebrew).
- R. Medzini, "East Jerusalem Rebuilt: Where is the next confrontation hidden?" *Ynet*, <http://www.ynet.co.il/articles/0,7340,L-3808016,00.html> (Hebrew).
- A. Eldar, "Jerusalem Municipality Froze Construction of Jewish Neighborhood in East Jerusalem," *Haaretz*, 25.3.2009 (Hebrew).
- Channel 7, "Settlement of 'Kidmat Zion' in East Jerusalem Renewed," *Channel 7*, 3.5.2004: <http://www.inn.co.il/News/News.aspx/77622> (Hebrew).
- ¹² S. Yerushalmi, "Division of Jerusalem: For better or worse, impossible," *NRG*, 25.7.2009 (Hebrew).
- ¹³ R. Medzini, "East Jerusalem Rebuilt: Where is the next confrontation hidden?" *Ynet*, <http://www.ynet.co.il/articles/0,7340,L-3808016,00.html> (Hebrew). A. Eldar, "Police Evacuates Headquarters in East Jerusalem, Right-Wing Organizations Enter," *Haaretz*, 28.4.2008 (Hebrew).
- ¹⁴ R. Medzini, "East Jerusalem Rebuilt: Where is the next confrontation hidden?" *Ynet*, <http://www.ynet.co.il/articles/0,7340,L-3808016,00.html> (Hebrew). N. Hasson, "New Plan Will Turn Ras al-Amud into Largest Settlement in East Jerusalem," *Haaretz*, 23.8.2009 (Hebrew).