

# **Governance Discussion Document: A Special Regime for the Old City of Jerusalem**

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## **Executive Summary**

The Old City of Jerusalem is the central focus of the national aspirations of both Israelis and Palestinians. This small, densely populated space embodies every aspect of the Israeli-Palestinian conflict, including overlapping political, demographic, security, economic, social, and religious claims. The area is also a central focus for Jews, Muslims, and Christians worldwide. Palestinian and Israeli negotiators will have to deal with and master the complexities of Old City governance if they are to achieve a viable, comprehensive solution to the Israeli-Palestinian conflict. To do so will present extraordinary challenges, including overcoming the systemic distrust that pervades the Palestinian-Israeli relationship.

The heart of the problem is this: Israelis and Jews see the Old City of Jerusalem as their birthright from of the time of King David some 3000 years ago. The Temple Mount within the Old City with its Western Wall is the holiest site in Judaism, and the Wall is the most sacred place of Jewish worship. Muslims also see Jerusalem as their birthright dating from the first Muslim presence in the seventh century. The Haram al Sharif is their third holiest site, the place from which they believe Mohammad ascended into the heavens. Both vigorously dispute ownership of the Haram/Temple Mount and its foundation wall, all of which are overlapping parts of the same construction. Given the overwhelming importance of this common sacred space and its place in religious and national narrative, neither side shows any willingness to concede to the other's claims, for to do so would undermine their own legitimacy. Although the city today is less of an issue of religious and political contention for Christians, they also look to Jerusalem as the centre of their faith, the place of the crucifixion and the resurrection of Jesus.

These challenges demand special governance arrangements. Based on extensive consultations and study, the Jerusalem Old City Initiative has concluded that the optimal solution is an Old City “special regime,” founded on agreed norms of international law, established at the direction of both Palestine and Israel. The envisioned mandate would remain in force until the parties achieve a negotiated agreement that establishes a new system of governance for the Old City.

The proposed Old City Special Regime would neither resolve nor seek to resolve competing claims to sovereignty over the Old City and its Holy Sites. Rather, it is designed to permit the achievement of a peace agreement even in the absence of such a resolution — facilitating the smooth functioning of life within this highly contested space without prejudicing the sovereignty claims of either side. To be sure the special regime would not be assigned sovereignty but would be tasked by the Israeli and Palestinian governments to perform specific functions on their joint behalf. Establishment of this special regime would require the full approval and participation of both Israel and Palestine — something that would not be achievable unless both sides were convinced that the envisioned arrangements would be open to the resolution of sovereignty claims in the future.

## Key Characteristics and Functions of the Special Regime

The proposed special regime, headed by a Chief Administrator, would be responsible for the efficient and equitable management and governance of the Old City, including ensuring the sanctity of and access to the Old City's Holy Sites. In doing this, it would have to take into account the needs, interests, aspirations, and sensitivities of all stakeholders — including not only residents but also workers and business people living outside the Old City walls, as well as tourists and religious pilgrims.

The regime's mandate would extend to those aspects of life that are, by their nature, uniquely grounded in the Old City: security and policing, entry and exit, movement and access within the Old City and to its Holy Sites, heritage and archaeology, residency and property ownership, zoning and planning, and environmental regulation. Aspects of life linked to nationality (e.g., political rights, education, family law) would be the province of the national authorities, Palestinian and Israeli. That said, to the greatest degree possible the special regime would need to preserve the urban fabric connecting the Old City and the rest of Jerusalem, meaning that arrangements for the Old City should not be divorced from Jerusalem as a whole. Moreover, some functions — including legal, environmental, and those related to infrastructure and utilities — would involve a degree of shared authority, requiring ongoing coordination between the special regime and the relevant national and municipal authorities.

To meet these responsibilities, the special regime would require an empowered autonomous bureaucracy — one whose leadership has the confidence of both Israel and Palestine and one that is vested with both the authority and the capacity to administer, manage, and police specific aspects of the Old City and its inhabitants.

Our discussions have shown that the Israelis express their concerns mainly in terms of security while the Palestinians frame their concerns in terms of fairness and equity. To be sustainable, the special regime would have to balance both. Given the importance of security concerns in the Israeli-Palestinian arena, a key function of the Special Regime this regime would be to ensure equity, law, and order. Security will be the test of any peace agreement: if order in the Old City breaks down, any Israeli-Palestinian peace agreement itself will be at risk. Moreover, equity and security are the *sine qua non* for sustainable governance: no regime can be sustained if it cannot provide both, including, in the special case that is the Old City, ensuring access to Holy Sites for residents and visitors. In terms of equity, the special regime must ensure equality of treatment for all residents and visitors to the Old City in all its functions. Furthermore, the structure and nature of the executive authority will need to respect and preserve the dignity and rights of all residents and visitors.

Thus, the Old City Special Regime would require a robust security force, with the capacity both to deliver even-handed law enforcement and justice and to confront successfully large-scale security threats, including potential efforts by extremists from the various camps seeking to undermine an Israeli-Palestinian peace agreement. Substantial third-country participation in such a force would be vital, helping to overcome the deep mistrust that exists between the sides. Close liaison and coordination with Palestinian and Israeli police would also be crucial. The special regime would also have an independent legal system and dispute resolution mechanism for specified issues of adjudication and resolution.

The proposed special regime would require substantial financial support from Israel and Palestine, as well as from the international community, to fulfill the mandate. While

the regime would have some fundraising capacity (through taxation, fees, and bonds), it would not, on its own, have sufficient resources to carry out all its responsibilities. International support for the special regime would be all the more imperative given the Old City's meaning and symbolism worldwide and the threat to any peace agreement that would ensue were the regime to fail.

The characteristics and functions of the special regime are more fully explained in parts I and III of this document.

### ***Governance Structure of the Special Regime***

The special regime would be created and supported by the parties themselves — Palestine and Israel — with the support of the international community. Structurally, the regime would be anchored in an Old City board, consisting of senior representatives of the Israeli and Palestinian governments, as well as representatives of select other countries agreed to by the parties. The principal functions of the board would be to appoint, on behalf of the Israeli and Palestinian governments, the special regime's chief administrator and to maintain oversight of the application of the mandate.

The chief administrator, an experienced and internationally respected individual who is neither Israeli nor Palestinian, would be the special regime's executive authority. The chief administrator would have overall independent responsibility for policing and security and also specified public administration and governance functions. This authority would extend to appointing a police chief, accountable to the chief administrator, and establishing offices to liaise with the Israeli and Palestinian authorities at the senior and working levels. The chief administrator and staff would also work with existing and new local and international bodies, representing the stakeholders. Prominent among these would be the advisory religious council, to provide advice on the management of the Holy Sites.

Other bureaucratic bodies (see Annex A) would develop organically under the authority of the chief administrator, in order to respond to the various needs of the stakeholders. When the special regime is initially put into place, it is recommended that the chief administrator establish specialized transitional commissions the administrator believes warranted.

The full governance structure of the special regime is detailed in Part II of this document.

### ***Conclusion***

Traditional thinking about solutions for the Old City has been restricted to zero-sum options (i.e., either Israeli or Palestinian sovereignty over the entire area) or unwieldy plans to divide sovereignty (e.g., the Clinton parameters, the Geneva Accord). In this document, the Initiative is offering another option.

Typically analysis of possible solutions to the conflict over the Old City of Jerusalem looks at three options: 1) sovereignty and control in the hands of Israel, 2) sovereignty and control in the hands of the new Palestinian state, and 3) the division of the Old City between the parties as, for example, in the Clinton parameters and the Geneva Accord. Options 1 and 2, where sovereignty and control are exclusively in the hands of one party or the other, will not result in a peace agreement. Option 3, a simple division of sovereignty within the Old City, given the unhappy history of cooperative

efforts by the parties and the legacy of a century of conflict, would, in our view, be untenable as well, for the foreseeable future.

Recognizing that it is very difficult for governments to undertake this kind of study, this discussion document represents our best attempt to present a “fourth option” for the Old City, neither control by one party at the expense of the other nor split governance. While we are convinced the prospects for peace and reconciliation exist and can be realized with good will and hard work, we do not believe that the Old City can be governed effectively by the two parties alone until trust builds over time with the successful implementation of the peace treaty.

Our proposed solution, which grants full control to neither party and leaves sovereignty questions open, is based on two things: 1) the recognition that zero-sum options are incompatible with a peace agreement, and 2) the firm belief that it is impossible, for the foreseeable future, to divide sovereignty and governance within this small, densely populated area, with its overlapping sacred spaces. Short of a peace agreement that resolves, to the satisfaction of all stakeholders, competing claims to the Old City and its Holy Sites, we believe this proposal is the best and perhaps only option that will permit the achievement of peace.

Indeed, a key advantage of this option is that, if adopted, it would ensure that Palestinian-Israeli peace would not be held hostage to the final resolution of claims to the Old City and its Holy Sites. The importance of this point should not be underestimated. Given the national and religious sentiment attached to the Old City and its Holy Sites by both the Palestinian and Israeli communities, it is likely that even the most promising peace negotiations could easily fall apart over these issues.

Finally, our proposal would give any resulting peace agreement the breathing room it needs to succeed. It would provide time for peace between the two peoples to be consolidated so that when the parties try, at some future time, to find a permanent solution for the Old City, they can do so in an environment of shared interests and trust and with a much greater likelihood of success.

## Rationale

For decades the Israeli-Palestinian conflict has taken lives, destroyed opportunities, and hindered the national development of Palestinians and Israelis. It has obstructed the acceptance of Israel as a legitimate and integral member of the Middle East state system and blighted its relations with much of the international community. It has delayed the entry of Palestine as a recognized and viable state into the international community. Resolution of this conflict is critical to relations among the Islamic, Jewish, and Christian worlds.

Jerusalem and its Old City in particular, is the central focus of Israeli and Palestinian national aspirations. At its very core, the conflict is about control over Jerusalem’s Holy Sites, the most important of which, the Haram al-Sharif/Temple Mount, the Kotel/Western Wall, and the Church of the Holy Sepulchre, are located within the stone walls of the Old City. Most importantly, the sacred space of the Haram al-Sharif and Temple Mount are physically overlapping and indivisible.<sup>1</sup> These sites are powerful

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<sup>1</sup> Old City Holy Sites are often referred to interchangeably by their Arabic, Hebrew, or English names. We recognize the sensitivities inherent in using one term over another, and must stress that the usage in this document in no way represents a bias. We have thus chosen the terms most common in academic literature. We elected to use the term “Western Wall” to refer to the

religious, cultural, and emotional symbols that must be administered with fairness and equity if the profound needs of stakeholders are to be met. Without the sustainable, effective, and equitable management of the Old City's status, enduring peace between the Palestinians and Arabs, on the one hand, and Israelis, on the other, will be unattainable.

The Old City of Jerusalem is a microcosm of the Palestinian-Israeli conflict, encompassing political, demographic, security, economic, social, religious, territorial, and environmental elements, among others. The search for a solution to the conflict is complicated by the systemic distrust that exists between the sides, in particular with respect to Holy Sites, their surroundings, ownership, security, access, and human dignity. Israeli and Palestinian negotiators will have to master the complexities of Old City governance if they are to achieve comprehensive peace.

The Jerusalem Old City Initiative was established to develop creative governance and management options for the Old City, based on a two-state solution and two national capitals in the Jerusalem conurbation. For over four years we have worked in close consultation with Palestinian, Israeli, regional, and international experts and advisors to this end. The recommendations in this document are intended to provide negotiators, political leaders, and policy planners with creative ideas for practical solutions that can bridge gaps and spark imagination. Our recommendations contained in this document aim to offer workable solutions. They are based on preliminary ideas first formulated in "The Jerusalem Old City Initiative Discussion Document: New Directions for Deliberation and Dialogue," published in late 2004 and available on our website at [www.uwindsor.ca/jerusaleminitiative](http://www.uwindsor.ca/jerusaleminitiative).

As a result of our research and our consultations, we have come to believe that governance solutions based on the notion of dividing the Old City between Israelis and Palestinians are problematic, given overlapping claims and aspirations coupled with their charged history. With an area of just 0.9 square kilometres, the Old City is too small, too densely populated, too architecturally linked, and too riven by systemic distrust to be managed viably by a number of separate authorities that would carry, perforce, a legacy of acrimony and be imbued with mutual suspicion and distrust.

The attachment to religious and national symbols is so intense and the wounds so deep that they will require a very long time to heal. We see no evidence that ingrained bias, resentment, and prejudice will erode in the near term simply by the act of signing a peace agreement. Changing human and community behaviour patterns requires the effort and experience of decades.

We believe, however, in the context of a two-state solution, sustainable governance arrangements can be agreed upon by both sides, treating the Old City as a single entity under a special regime led by a chief administrator. The Old City Special Regime proposal is designed to offer negotiators a detailed, realistic, integrated model for addressing the myriad challenges of Old City governance. The solutions offered in the proposal would ideally be adopted as a whole — which we believe to be the optimal solution — but could also be adopted in parts or in some combination, according to the needs and preferences of the negotiators.

We envisage the parties — Palestinians and Israelis — constituting the chief administrator's source of authority. It is they who would determine the special regime's

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Kotel (Hebrew)/Al Buraq (Arabic), and the terms "Temple Mount" and "Haram al-Sharif" (Arabic) instead of the lesser known term "Har ha-Bayit" (Hebrew).

mandate and they who would choose the administrator. The arrangement we propose is unique because it is the parties themselves who will create the governance mechanisms.

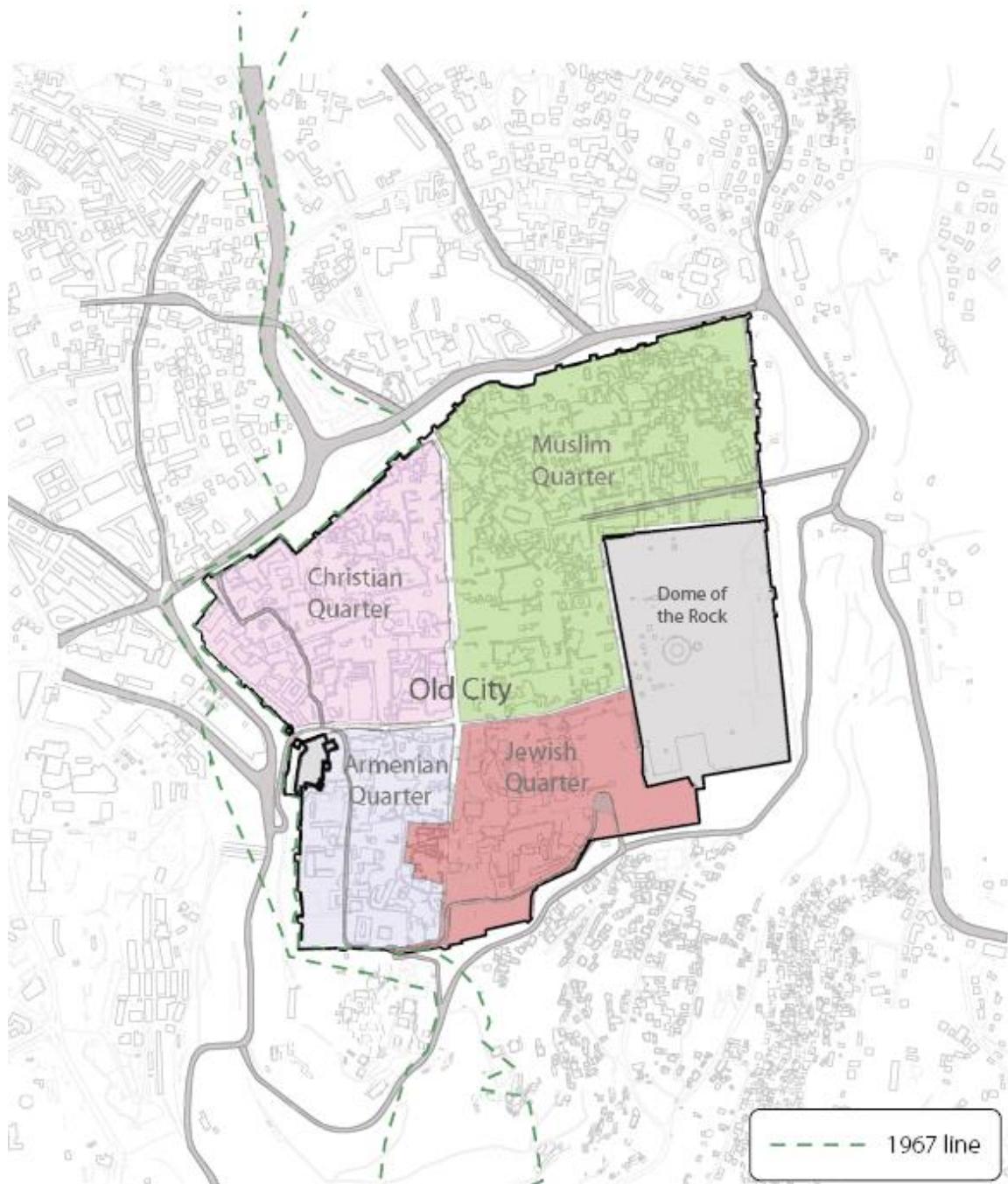
To ensure fair and appropriate access to the Holy Sites for Muslim, Jewish, and Christian believers, access, movement, safety, and security requirements must, in our view, be met by a single impartial authority so that rights can be exercised equitably without fear of retribution or intimidation.

Virtually every issue today has the potential to develop into a serious crisis among differing individuals, believers, and communities. Sustainable arrangements must create peace, order, and good governance by ensuring that a single, impartial authority, in this case the chief administrator, enjoys a clear mandate from the parties and the strong support of the international community, thereby enabling the incumbent to ensure orderly access, equitable law enforcement, and public order. The administrator should be made responsible for ensuring the rights and dignity of all.

The Old City Special Regime will necessarily exist as a separate governance entity surrounded by Israel's capital in West Jerusalem, Yerushalayim, and Palestine's capital in East Jerusalem, al-Quds. The need, however, to maintain the urban fabric and contiguity of the Jerusalem conurbation as a whole is also critical. The nature of governance in such a complex, intertwined, urban area would, of course, require close coordination on municipal and broader issues with the two national and municipal governments concerned.

The discussion developed herein is the culminating document in a series of papers detailing the characteristics of the special regime and examining various possibilities and arrangements within that framework. Earlier documents examine and propose a variety of possible solutions focused on this concept. In particular, the "Jerusalem Old City Initiative Security Assessment," released by our Security Working Group in November 2007, lays out in considerable detail the requirements for law enforcement and security systems. The "Jaffa Gate Crossing Facilities Study" by Saya Architecture and Consultancy provides innovative ideas for implementing an efficient security system at one of the Old City's busiest gates. These and other research and policy papers are available online at [www.uwindsor.ca/jerusaleminitiative](http://www.uwindsor.ca/jerusaleminitiative). It is from them and from innumerable meetings, workshops, and conferences that we have developed our proposals. To all those who contributed, we owe a great debt of gratitude. Responsibility for the conclusions drawn in the document, however, and for any errors, rests with the authors alone.

## Map of the Old City of Jerusalem



— 1967 line

## Part I: Overview of the Old City Special Regime

### 1.1 Core Features

Any successful special regime must take into account the needs, interests, aspirations, and sensitivities of all stakeholders. It must put in place a system that can effectively manage and facilitate the normal functioning of the Old City and protect residents, visitors, Holy Sites, and other symbolic venues. It must be capable of coping successfully with crises and it must do this in a manner that is effective, fair, and equitable, and is seen by the parties, Israel and Palestine, to be so.

The Old City Special Regime should contain the following key characteristics:

*a. Israeli/Palestinian Ownership* A regime for the Old City would have to be created and embraced by both Israel and Palestine, the source of its authority. The special regime and its mandate should, in our view, be integral parts of a peace treaty between Palestine and Israel. These two parties, acting together, would need to create what we have called an Old City board to which the Chief Administrator would ultimately be accountable.

*b. Mandate* The mandate, which would be the basis of the special regime, would be drafted and issued by the parties as an integral part of a peace treaty and its associated documents. The mandate would lay out the functions of the special regime and invest authority in the chief administrator, stipulating agreed-on functional limits. The peace treaty would establish the Old City board and delineate its functions.

*c. Relevance under Different Sovereignty Scenarios* We recognize the significance of physically overlapping sovereignty claims by the two parties to territory and sacred space within the Old City. Agreement on the primordial question of sovereignty would clearly be the most desirable outcome of any negotiation. We consider, however, that the prospect of early resolution is remote.

We believe that existing claims to sovereignty are so exclusive and based on such deeply felt national and religious identities and community narratives that bilateral Palestine and Israel governance options cannot be realized except through the role of an interim third party. Through the third-party presence, with growing trust and experience, confidence between Israelis and Palestinians can be established and reinforced over time, making feasible what today seems impracticable.

In the unlikely event that the parties are able to reach agreement on sovereignty, this will not mean that suspicion, distrust, competition, and prejudice would disappear. It seems likely to us that, particularly in the initial years, provocateurs and spoilers may do their worst in the hope of promoting the collapse of the agreement. If a bilateral system were to break down over issues such as archaeological excavation or tunnelling, let alone access to and conduct at Holy Sites, the entirety of any peace treaty could fall apart. Such is the emotive force of sacred space. Therefore, a special regime with appropriate modifications and scaled to the magnitude of its responsibilities might still remain the optimal system for the interim management of the most contentious elements involved. We believe that conclusive Palestinian-Israeli agreement on sovereignty over the Old City would be optimal, yet even in this case, a third party role would still be necessary to ensure stability.

For the purposes of this document, however, we have assumed the more complex scenario of a special regime installed in a situation where the assignment of sovereignty within the Old City has been postponed. Under this scenario, our research conducted by

the Jerusalem Old City Initiative suggests a special regime would have to take on a broader range of functions than if most sovereignty issues were resolved.

*d. Third-Party Support and Participation* A strong third-party role would be central to the regime's ability to meet the legitimate equity and justice, safety and security, emotional and psychological, and religious and material needs of the Old City's stakeholders. We realize that this third-party element may raise concerns respecting perceived or real impacts on sovereignty. We thus emphasize again that our proposals do not seek to resolve, or in any way prejudice, sovereignty claims, which remain within the total purview of the parties. The special regime, as we conceive it, will be created and owned by the parties, who will appoint the chief administrator and issue the mandate. This mandate would assign specific tasks or functions to the special regime, but not sovereignty. What is more, the special regime would be sustained by the participation of Israel and Palestine in the Old City board. Such an arrangement would be unique and would in no way constitute internationalization or a *corpus separatum*, concepts we reject.<sup>2</sup>

*e. Sustainability and Legitimacy* To be effective, the special regime's governance arrangements would need to strike a careful balance between sustainability, which requires autonomy of decision making for the chief administrator, on the one hand, and coordination and consultation with the parties, on the other. The administrator would require clear and unimpeded lines of authority and management, coupled with the capacity to maintain public order and react rapidly and effectively in case of crisis. Given conflicting national aspirations and claims, the profound, systemic distrust between the parties, the almost inevitable activity of "spoilers," and other factors, including the Old City's complex and diverse society, any successful administration by a third party would also require ongoing support and active participation by local representatives of the Old City's existing social, religious, and institutional bodies. The chief administrator would have to establish consultative mechanisms to this end. The regime's legitimacy would begin with the fact that its mandate is rooted in the Israeli-Palestinian peace agreement, and in the fact that Palestinians and Israelis would shape the rules that guide it. Support from the international community, including a supportive United Nations Security Council resolution, would strengthen that legitimacy. However, in the end, the character and skills of the individual chosen as chief administrator will be critical.

*f. The Urban Fabric* To the greatest degree possible the special regime would need to preserve the urban fabric that connects the Old City to the rest of Jerusalem. Arrangements for the Old City cannot be divorced from the Jerusalem conurbation as a whole. Relatively few residents live their lives strictly within the confines of the walls; most have family, social, and economic relations beyond. Conversely, many of those who earn their living in the Old City reside elsewhere. The walled city's symbolism, as well as its infrastructure, economic, and social realities, and the legions of tourists and pilgrims eager to visit their Holy Sites, make it inseparable from Jerusalem as a whole. Very few

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<sup>2</sup> "Internationalization," to us, implies that the Old City would be governed by an external authority under an international jurisdiction, for example a commissioner appointed by and accountable to the United Nations or some other outside body. The *corpus separatum* designed under UN auspices in 1948 to exclude Jerusalem from both Israeli and Arab control, called for in Resolution 194 of the United Nations General Assembly, is an example of an internationalization model.

stakeholders — Jerusalemites, Israelis, Palestinians, Muslims, Christians, or Jews — will accept the Old City as an isolated enclave. Meaningful and strong linkages with the Israeli and Palestinian capital cities Yerushalayim and al-Quds are therefore both natural and necessary. The participation of the special regime in any future arrangement to coordinate services, infrastructure, standards, and utilities would be imperative.

*g. Focus on Place* The Old City, defined by its walls, demands special governance arrangements. However, such arrangements must recognize that the inhabitants are part of larger communities extending beyond the walls, and that these communities already have and will have in place legal, social, and cultural structures to address many aspects of their daily lives. Residents of the Old City would overwhelmingly be citizens of the new Palestinian state or of Israel.<sup>3</sup> In many cases, in civil matters Palestinian residents would be subject to Palestinian law, Israeli residents to Israeli law. A workable special regime must thus seek to focus more on place — and critical issues of friction related to place — than on people. It should address those functions that are quintessentially of the Old City, for example the security of the Holy Sites and worshippers. It should leave undisturbed natural linkages, including national political rights, education, and family law, which would remain the domain of a resident's country of citizenship, Palestine or Israel.

## **1.2 Guiding Principles for Place and People**

Functions and activities within the Old City can be divided into two categories: place and people. The relation of the special regime to each function and activity should depend on and be governed by this categorization.

*a. Place Functions under the Authority of the Special Regime* Place functions include all those related to Holy Sites, heritage, and archaeology, as well as all aspects of security and policing (see section 1.4 below). Because of their highly contentious nature and their inter-linkage, these functions must be under the authority of the chief administrator. Indeed, successful oversight and management of these functions is the core mission of the special regime. Beyond this there are other requirements, which, due to their location-based connection to the Old City and their potential to generate conflict, would best be placed under the authority of the special regime.

The extent of this authority should, in part, reflect the extent to which issues of sovereignty have or have not been resolved by the parties. These could include issues such as residency permits, planning and zoning, and local infrastructure and services — areas that will likely remain matters of political contention between the parties and whose management affects peace and security. In many of these cases, there is a need for degrees of reference to and coordination with national and municipal bodies.

*b. People Functions under the Authority of National Governments* People functions include those grounded not in the Old City itself, but in the approximately 35,000 people who inhabit it, as well as those who work in it, or visit it. Under the proposed special regime, most residents would be citizens of either Israel or the new state of Palestine, and they would exercise their political and social rights and duties in the context of their own

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<sup>3</sup> We recognize, of course, that a number of foreigners have lived, do live, and will continue to live in the Old City. Special arrangements already exist for them. Responsibility for them would be transferred to the special regime.

states and national capitals. Israeli residents would vote in the national and municipal elections of Israel and of their capital, Yerushalayim. Palestinian residents, who are currently permanent residents of Israel, would normally become citizens of the Palestinian state. They would participate in the elections of that state and of their capital, al-Quds. People aspects of the lives of residents including education, family matters, health, social programs, and religious practice would fall under the authority and jurisdiction of national governments and the laws and regulations of their respective states.

Following the Israeli occupation of East Jerusalem in 1967, Palestinians in that part of the city were accorded Israeli “Permanent Resident Status,” unlike those in the West Bank and Gaza. This status carries with it access to Israeli welfare and health insurance benefits as well as freedom to travel and access to employment on a level denied to other Palestinians. Like Israelis, Palestinian Jerusalemites pay for these services through taxes. These services are highly valued and consequently place Palestinian Jerusalemites in a privileged position.

Some of our Israeli and Palestinian research partners involved in the Initiative have recommended that the special regime create an alternative to the National Insurance program for Palestinian residents in the Old City. We have reservations. This is a Jerusalem issue, with important ramifications for both Israel and the new Palestinian state; it is not an Old City issue. It is doubtful that the international community would be willing to fund a program that privileges one small portion of the Palestinian population at the expense of the rest. Furthermore, this is an issue that has stability, security, and legitimacy implications for any two-state solution and must be addressed within the context of final status negotiations. The challenge of how to handle situations of this sort equitably, taking into account not only people’s expectations but also the rights they accrue from contributing over time to pension and health insurance funds, for example, is one where there are considerable international experience and a wealth of examples to draw on.

### **1.3 Mandate, Geographic Scope, and Duration**

Certain defining elements would need to be specified in the agreement between the parties that creates the special regime, as follows.

#### **1.3.1 The Mandate**

The mandate issued by the parties to the chief administrator would *inter alia* establish responsibility for the management and administration of matters of particular sensitivity and friction, especially policing and law enforcement, access to the Old City and the Holy Sites, and protection of the Holy Sites and worshippers, along with heritage protection and archaeological oversight. On the assumption that sovereignty issues are deferred, the chief administrator would be assigned responsibility for residency permits for inhabitants living within the Old City. The mandate would also include a regulatory role respecting planning, zoning and construction permits, property matters, infrastructure, environmental, and safety issues. The special regime should have a basic legal system including dispute resolution mechanisms to resolve disagreements. Agreed norms of international law will act as a foundation for this system.

### **1.3.2 Geographic Scope**

The special regime is designed specifically to meet the challenges of the Old City. Limiting the application to the Old City, within and including the walls, has significant practical advantages, including well-defined boundaries and a clear capacity to control exit and entry into the area.

If the two sides were to agree, it might be possible to expand aspects of the system beyond the Old City to other sites of substantial friction and religious claims, such as the Mount of Olives and the City of David settlement in the Palestinian village of Silwan. There is no reason to rule this out *a priori*. After much consideration, however, we have concluded that such an extension may be difficult to manage and sustain, given the challenge of defining clear authority for the special regime in this larger area and the differences that would arise between the regime authorities and sovereign governments. The many Holy Sites outside the Old City can be managed, we believe, through other creative options, including the application of World Heritage Site regulations, similar to those applied inside the walled city today.

### **1.3.3 Duration**

The duration of the special regime has been the subject of continuous debate through the life of this project. Recommendations range from as little as five years to centuries. The critical factor is that the special regime must be in place for sufficient time to permit a comprehensive peace agreement to be consolidated, or until the parties jointly come to another solution. Although some of our partners had differing views, we believe that the parties need to consider the advantages of a mandate that would remain in force for a generation, giving sufficient time for peace between the two peoples to become a reality and also sufficient time to discourage efforts by elements on either side from attempting further land grabs at the expense of the other. The special regime could continue thereafter, pending agreement by the parties to an alternative. Indeed, it could be ended sooner, if the parties agree on an alternative arrangement. The special regime is the creation of the two parties, and should not impede possible further agreements regarding sovereignty.

## **1.4 Equity, Justice, and Security**

### **1.4.1 The Importance of Equity**

After decades of mistrust and violence, a special regime must be capable of delivering equitable, even-handed law enforcement and a justice system that would provide safety to all, based on the rule of law rather than national agendas. Equally importantly, it must provide equitable treatment to all residents and visitors and respect their dignity in all aspects of its functions. It must not be perceived as merely replacing one occupying authority with another. Thus, the role of the third party and the implementation of its mandate are critical in terms of equity for all residents and visitors to the Old City.

### **1.4.2 Security as the Sine Qua Non for Sustainable Governance**

In the absence of an equitable, reliable, effective security system that has the confidence of the parties and their citizens, no Old City governance arrangements will be sustainable. Both Israel and Palestine require a system that offers the best possible security and safety for their citizens, for the Holy Sites, and for tourists and pilgrims. The system must ensure that the Old City will not become a base of operations or incitement against the

parties or the peace agreement. Nor can it become a haven for criminal activity. Governance arrangements must ensure that treatment without bias or favour is accorded all residents and visitors.

#### ***1.4.3 Security as the Test for Any Peace Agreement***

There is a broader context within which a security system that protects all residents must be viewed. A comprehensive peace agreement between Palestine and Israel will almost certainly be a package deal in which the parties will make compromises and agree to tradeoffs among core issues, including the Old City. Under any peace agreement, if security in the Old City breaks down, the agreement itself will be at risk.

### **Part II: Governance Structure**

#### **2.1 Overview**

The Special Regime would be composed of the following central elements.

##### ***2.1.1 The Old City Board***

As an integral part of their peace treaty and its related documents, the parties would create an Old City board consisting of senior representatives of the Israeli and Palestinian governments and representatives of select other countries agreed to by the parties. The principal functions of this board would be the appointment, on behalf of the Israeli and Palestinian governments, of the Old City Special Regime's Chief Administrator and the oversight of the regime's mandate.

##### ***2.1.2 The Chief Administrator***

Executive authority would be vested in a chief administrator, an experienced and internationally respected individual appointed by and reporting to the Old City board. The administrator would have overall independent responsibility for assuring equity, security, and specified public administration and governance functions. The requirement for fair-minded legitimacy means the chief administrator should *not* be a citizen of either Israel or Palestine because of the mistrust and expectations this would create. The administrator should be appointed for a fixed, renewable term.

##### ***2.1.3 Inter-Authority Liaison***

Effective liaison between the special regime and national and municipal governments is fundamental to successful operation. There should be rapid access and consultation in case of crisis. Liaison offices should be established for this purpose. Senior-level liaison officers would facilitate direct and immediate communication between the chief administrator and the Palestinian and Israeli presidencies, prime ministries, and key ministries responsible for security and defence along with the mayors of the two capitals. Working-level liaison officers would connect the various departments of the special regime with their national and municipal counterparts.

##### ***2.1.4 The Old City Police Service***

The chief administrator would have responsibility for establishing and overseeing an internationally staffed police service functioning under a unified command structure. The service would be headed by a police chief to whom all on the force will be accountable.

In turn, the police chief would be accountable to the chief administrator, who would appoint the police chief with the concurrence of the Old City board. To ensure stability, fairness, and equity, the police service's mandate would include community policing, the maintenance of public order, counter-terrorism, Old City entry and exit control and monitoring, the enforcement of civil and criminal laws, security, and intelligence. The police service would liaise closely with Palestinian and Israeli security services as well as with community groups functioning within the walls. The Old City would be a weapon-free zone except for the Old City police.

### ***2.1.5 Old City Legal and Dispute Resolution Systems***

The special regime would include a basic, independent legal system and a dispute resolution mechanism for specified issues of adjudication and resolution.

### ***2.1.6 Transitional Commissions***

At the outset the chief administrator would establish a number of specialized transitional commissions to review more complex issues and make recommendations on frameworks for their management.

### ***2.1.7 Consultative Councils and Bodies***

The chief administrator would also work with existing and new local and international councils and bodies, representing the various stakeholders. Of critical importance would be the Advisory Religious Council, independent from the special regime, which would provide advice on the management of the Holy Sites and related issues. The composition of this body should take into account the views of the existing Council of Religious Institutions of the Holy Land and the heads of the various religious communities and institutions resident in the Old City.

## **2.2 The Old City Board**

### ***2.2.1 Definition***

The Old City board would be established jointly by the Israeli and Palestinian governments and embedded in or appended to their peace treaty. The board's primary purposes would be to appoint the chief administrator, maintain oversight of the mandate, and be the administrator's formal point of contact with the parties. Each party would designate a senior official or officials as its representatives on the Board.

### ***2.2.2 Composition***

The inclusion of outside members, selected by the parties, could help bridge differences and resolve issues, as distrust between Israeli and Palestinian members may be considerable. Furthermore, third parties on this board could help defuse political pressure on Palestinian and Israeli representatives and their governments, particularly from elements within their own countries including domestic constituencies. In addition, international membership would underpin the legitimacy of the special regime and enhance the parties' ability to raise funds and recruit technical expertise and personnel for the regime's operations. The presence of selected outside representatives is not intended to detract from the responsibility of the parties — the signatories to the peace agreement — but rather to support them. The outside members should direct their efforts to reinforcing confidence between the two sides.

The structure and composition of the board would be decided by the parties in their peace negotiations to avoid possible disagreement during implementation. Various options have been considered regarding the structure of the board. While the board should be small enough to be manageable, its size should be determined by the parties. Membership would consist of equal numbers of representatives of the Palestinian and Israeli governments and representatives of a small number of additional countries and/or institutions acceptable to them and chosen by them. Old City board meetings would include all members; however, decisions should require the concurrence of the two parties to ensure their continuing ownership of the process.

### **2.2.3 Functions**

The primary purpose of the board would be to provide Palestine and Israel with a mechanism to recruit and appoint the chief administrator, to oversee the mandate and act as the authority to which the administrator would be accountable. In addition, the board's role would include ratification of the chief administrator's nominee for police chief.

During the start-up phase, the board would be consulted regarding the structure and establishment of special regime institutions and the resources required for them, the mandating of any transitional commissions, the review and confirmation of recommendations issued by those commissions, and establishment of the legal framework including guidelines for heritage, archaeology, and conservation, along with residency and property. Once the special regime is in place, the board would review and approve the annual operating budget, review the chief administrator's annual reports, and take the lead in fundraising to support the regime's operations. *In extremis* the board would have the power to remove and replace a chief administrator for reasons of misconduct or incapacity. It must be stressed, however, that the board should not be involved in the day-to-day operations of the special regime, as otherwise the mandate we envisage could not be fulfilled.

## **2.3 The Chief Administrator**

### **2.3.1 Definition**

The special regime model we are proposing calls for the recruitment and appointment of an internationally respected individual as chief administrator. The administrator would be appointed for a fixed, renewable term of five years. Any shorter period would inhibit the occupant's ability to ensure continuity in practice and policy and ultimately could affect the quality of the peace.

### **2.3.2 Authority**

The chief administrator would have executive responsibility and authority, rooted in the mandate negotiated and adopted by the parties. Such authority is a requirement to enable the administrator to manage responsibilities equitably and to react effectively and rapidly to ensure the security and stability of the Old City, for the benefit of its inhabitants and visitors, as well as other stakeholders, most particularly Palestine and Israel. The chief administrator must be empowered to act quickly and decisively in the face of threats to public safety, to Holy Sites and heritage sites, and to the peace treaty as it applies to the Old City. In the absence of an empowered administrator, relatively small problems would have the potential to become major crises with consequences for the Old City, Israeli-Palestinian relations and beyond.

### **2.3.3 Responsibilities**

In order to ensure that the core of the special regime's mandate is fulfilled, the chief administrator and authorized officials should possess authority over several key areas. Regarding security, these responsibilities should include monitoring and, when necessary, controlling access and egress through the gates, delivering effective security and equitable police and justice services, protecting lives, property and public order, and detaining suspects and making arrests.

Regarding the key issue of heritage sites and Holy Sites, the chief administrator should have the authority to protect the Holy Sites and those using them, and ensure appropriate access, to license, inspect, and, if necessary, suspend archaeological excavations, and to regulate construction, repair, and restoration especially where heritage buildings and structures are concerned.

Furthermore, other key areas of contention would require that the chief administrator have authority over planning, zoning, building permits, building and environment inspection, and land and property transfers. As well, the administrator and staff would regulate, monitor, and contract for urban services and utilities.

### **2.3.4 Reporting Relationship**

During the initial period, it would be useful for the chief administrator and the board to meet frequently to discuss the setting up of the special regime's institutions. Once the special regime is up and running, the chief administrator should meet formally with the Old City board on an annual basis and consult with the board as required on issues the administrator believes advisable. The chief administrator should submit an annual formal report that includes an external financial audit.

### **2.3.5 Personal and Professional Qualities**

To satisfy the requirements for transparency, impartiality, accountability, and sustainability in this new governance arrangement, it will be important that the chief administrator establish legitimacy by demonstrating exemplary values and ethics, proven leadership skills, excellent interpersonal abilities, respect for diversity, and sensitivity to real or perceived conflicts of interest. Strong management and communication skills and financial prudence would be essential. Given the small size of the Old City, the chief administrator's capacity to establish cordial personal relationships with residents is critical. The administrator should reside within the walls and be a visible presence in the Old City community. To assure the perception and reality of impartiality, the administrator should not be either Palestinian or Israeli; distrust is too deep to permit mutual confidence in equitable governance.

## **2.4 The Liaison Function and Consultative Bodies**

### **2.4.1 Rationale**

The chief administrator and staff should coordinate as appropriate with Israeli and Palestinian national authorities and with authorities from the Yerushalayim and al-Quds municipalities. Certain issues, such as protection of Holy Sites, would fall under the authority of the special regime, in close consultation with the advisory religious council. Other functions, such as the provision of health and education services to inhabitants, would fall wholly under national or municipal authorities. There would be other issues involving, for example planning and zoning standards or common municipal utilities and

infrastructure, where the interests of all would be served by cooperation and coordination. It is important that such communication not impede but rather facilitate the resolution of issues, the priority being to provide equitable governance.

### **2.4.2 *Liaison Offices***

Each of the parties should establish liaison offices with required staff to act as links between the chief administrator and the special regime with the national and municipal governments. This would ensure rapid access for the chief administrator and staff to authorities in case of a crisis as well as during the normal course of events. Similar liaison would be required with the municipalities over aspects of zoning, planning, property, and infrastructure, although these functions most often should be at the technical level. There should be close liaison and cooperation among the respective security and police services.

## **2.5 Legal Provisions**

The exploration of the legal aspects of the special regime has been particularly challenging. One option is presented here but more work should be done to yield a design that reflects more fully the views of the number of legal experts whose opinions were sought in the course of the present exercise. This design will be further developed through specific legal workshops organized by the Initiative in the near future.

The underlying principle guiding this present proposal is that the special regime should function with as few changes as possible to current practice. Rather than create a comprehensive legal system that would address every aspect of the Old City residents' lives, the jurisdiction of the special regime should, in our view, be limited to matters that concern the unique or essential characteristics of the Old City fabric, particularly those that are issues of friction and contention.

Legal provisions that would be developed would therefore address such administrative matters as archaeological excavation and heritage protection, planning, zoning, and construction permits, whereas education, family law, and health would fall under the respective municipal jurisdictions of Yerushalayim and al-Quds or the national jurisdictions of Israel and Palestine as appropriate. The special regime would also have to create the necessary legal mechanisms that would guarantee the full and equitable application of the law.

In our view, a special transitional law reform commission should be created for these purposes. This commission, appointed by the chief administrator, would establish the criteria that would serve to determine jurisdiction and law under the special regime, as well as the legal mechanisms needed to implement the new system. It would be composed of a number of Israeli, Palestinian and international legal experts.

### **2.5.1 *Application of Law***

In most cases, Palestinian and Israeli national courts would enjoy *ratione personae* jurisdiction, i.e., personal jurisdiction. Accordingly, Israeli law would apply to Israeli nationals residing in the Old City, while Palestinian law would apply to Palestinian nationals. With the exception of crimes listed below such as inter-ethnic crimes or "crimes against the Old City," an Israeli who committed a crime in the Old City would be brought to court in Israel and a Palestinian in Palestine.

The Transitional Law Reform Commission would have to define those exceptional matters over which the special regime would enjoy *ratione materiae* jurisdiction, i.e., subject-matter jurisdiction. Special regime courts of special jurisdiction would be created to this end and would apply special regime law, as opposed to Israeli or Palestinian national law.

Special regime law would be necessary to resolve cases involving “crimes against the Old City” (see below), regulatory and administrative disputes arising as a result of the application of the regime, and labour disputes arising between the special regime and its employees. Both a Special Regime Criminal Court and a Special Regime Administrative Court should therefore be established. The decisions pronounced by these courts would be subject to appeal to a Special Regime Court of Appeals that would have both a criminal and an administrative section.

One of the main priorities of the special regime would be to establish clear jurisdiction regarding the above-mentioned subject matters to which the parties would agree. However, due to the inherent sensitivity of many of those matters, conflicts of jurisdiction between special regime courts and Palestinian or Israeli national courts would inevitably arise. For example, both courts could consider themselves competent to hear the same case, or either of the two could consider the other not to be competent.

Consequently, it would almost certainly be necessary to create a competence tribunal that would pronounce on these conflicts as well as on inter-ethnic crimes. The competence tribunal could be composed of five judges or legal experts (two Israelis, two Palestinians and an international) who would apply international private law norms in order to determine jurisdiction. We recommend that the decisions of the tribunal be adopted by qualified majority voting, i.e., four out of five votes, under the condition that the vote of the international judge be one of the four votes required. This modality has the advantage of avoiding a decision without the consent of at least one Palestinian and one Israeli judge. The tribunal’s decisions would not be appealable.

The commission should also develop dispute resolution mechanisms that could be resorted to voluntarily. These mechanisms should comply with international mediation and arbitration norms and could be used when the dispute is civil or commercial in nature, or when it concerns the jurisdiction of the special regime.

### **2.5.2 *Ratione Materiae Jurisdiction and Special Regime Courts of Special Jurisdiction***

The special regime would have full or partial jurisdiction in the following matters.

*a. Crimes Committed against the Place* The transitional law reform commission would establish an exhaustive list of crimes that would be defined as “crimes committed against the place.” Cases involving such crimes would be heard by the special regime criminal court. The commission would determine both the procedural and substantive rules that the court would have to adhere to. In case of a conflict of jurisdiction arising between the special regime criminal court and an Israeli or Palestinian national court, the competence tribunal would determine which has jurisdiction.

*b. Inter-Ethnic Crimes* Cases involving inter-ethnic crimes would be referred to the competence tribunal, which would determine jurisdiction according to international private law norms. We suggest that inter-ethnic crimes of a particularly sensitive nature be defined as “crimes committed against the place” (e.g., attacks against a specific

religious or ethnic group of the Old City) and therefore subject to the jurisdiction of the special regime criminal court.

*c. Crimes Committed by Third-Country Nationals* Crimes committed by third-country nationals would be subjected to the law of the gate of entry regardless of the nationality of the victim. Accordingly, a third-country national who entered the Old City via Israel and subsequently committed a crime would be subject to Israeli law and such a case would be heard by an Israeli court. However, if the victim of a crime is Israeli and the “gate of entry” Palestinian, or vice versa, the question of the application of the law of the “gate of entry” despite the nationality of the victim should be studied further.

Crimes committed by third-country nationals against the place would constitute an exception to the application of the “gate of entry” law and would fall under the jurisdiction of the special regime criminal court, which has *ratione materiae* jurisdiction.

*d. Municipal and Local Matters* Matters such as constructing a building in the Old City without a license or excavating without a permit would fall under the jurisdiction of the special regime courts. Parking tickets, local taxes, and the sale of prohibited materials or other issues related to public health in the special regime area should also fall under special regime court jurisdiction.

*e. Civil and Commercial Disputes* Except for those cases where those involved in a civil or commercial dispute decide to resort to one of the dispute resolution mechanisms created by the special regime, we recommend that civil and commercial matters continue to fall under the jurisdiction of Israeli and Palestinian courts. In case of a conflict of jurisdiction, the competence tribunal would determine jurisdiction.

*f. Property-Related Disputes* As we suggest in section 3.4.2b, a transitional commission composed of Palestinian, Israeli, and international experts could be established to design a framework to oversee and deal with property transactions and disputes. Due to the complexity of these issues, we recommend that, at least initially, the responsibility for dealing with property transactions and disputes rest with an expert committee established by and responsible to the chief administrator.

*g. Disputes Related to the Application of the Special Regime* Disputes related to the application of the special regime would be administrative in nature, involving the special regime on the one hand and the residents of the Old City on the other (e.g., planning or zoning decisions), or arising between the special regime and its employees (e.g., application of a special regime employment contract).

The special regime administrative court would have *ratione materiae* jurisdiction over those administrative matters that would be defined as falling under the jurisdiction of the regime (e.g., planning and zoning regulation). The commission would determine what regulatory law norms would apply to these cases. In addition, the administrative court would have *ratione materiae* jurisdiction over labour-related disputes arising between the special regime and its employees. The commission would have to develop separate labour laws that the court would apply.

### **2.5.3 Appeal to the Special Regime Court of Appeals**

The decisions pronounced by the different special regime courts would be subject to appeal to the special regime court of appeals. This court would have both a criminal and

an administrative section and would be composed of five judges (two Israelis, two Palestinians, and an international) who would resort to qualified majority voting.

#### **2.5.4 Dispute Resolution Mechanisms**

The main advantage of dispute resolution mechanisms in a context of mutual mistrust between the two parties to the peace treaty — as well as with regard to misunderstandings and distrust among local citizens and regime employees, on the one hand, and the special regime, on the other hand — is that they allow for a free choice of law regarding both procedure and substance, in addition to the free designation of the arbiters or mediators. This flexibility is particularly attractive for parties to a civil or commercial dispute, but could be particularly useful in the resolution of disputes related to the application of the special regime, where efficient governance requires fast solutions.

The commission would therefore develop dispute resolution mechanisms that those involved in a dispute could voluntarily decide to resort to when the dispute is civil or commercial in nature, or when it concerns the application of the special regime.

We plan to commission further work in these areas shortly.

### **2.6 The Transition from *Status Quo* to Special Regime**

The transition from existing arrangements will pose considerable challenges, requiring careful planning and preparation. The actual transfer would occur in phases while establishing confidence, on both sides, in the special regime's efficacy and purpose. Suspicion and distrust will be high after the many failures of phased approaches in the past. Many of the steps suggested below should therefore proceed concurrently so that the concerns of all sides can be addressed in a balanced and effective manner. Given other instances, such as the Israel-Egypt peace treaty that provided for full implementation within three years of signature, there needs to be adequate time to arrange these matters.

Below is an illustrative list of steps required:

- Agreement between Israel and Palestine to establish the special regime.
- Negotiation of the terms of the mandate.
- Issuance of the mandate and establishment of the Old City board.
- Appointment of the chief administrator.
- Initial mobilization of international political, technical, and financial support.
- Creation of preliminary rules and guidelines to be effective as of the dates of the appointments to the Old City board and of the chief administrator, allowing for a reasonable interval to create more comprehensive provisions.
- Establishment of bilateral and multilateral linkages between the special regime and the Old City's religious communities and custodians of the Holy Sites, including the advisory religious council.
- Establishment of transitional commissions to identify options, standards, and regulations for the management of complex issues.
- Consultations with Old City community leaders regarding preferred methods of consultation with the special regime and the chief administrator.
- Establishment of the special regime's infrastructure including the police service.
- Establishment of a coordinated process of transition from Israeli control to special regime control, particularly regarding security and access.
- Establishment of preliminary legal and dispute resolution mechanisms.

- Decisions on the recommendations of the transitional commissions.
- Formalization of coordination and liaison mechanisms with national governments and municipalities.

In marshalling international funding and expertise and in the interests of sustainability, it is important to recognize that at present conditions of parity do not exist between the parties. There is no al-Quds municipality and the body of trained Palestinian urban planners, city administrators, and the like is small. Therefore, particular consideration should be given to international support for capacity building on the Palestinian side so that the Palestinian national government and the al-Quds municipality develop the abilities necessary *inter alia* to support and participate in the special regime.

## **Part III: Functions of the Special Regime**

### **3.1 Security and Law Enforcement**

#### ***3.1.1 The Jerusalem Old City Initiative Security Assessment***

Over the past three years, the Security Working Group of the Jerusalem Old City Initiative, working with Palestinian and Israeli experts, has developed “The Jerusalem Old City Initiative Security Assessment,” containing concepts, ideas, and detailed proposals for a comprehensive security system. (The full report is available at [www.uwindsor.ca/jerusaleminitiative](http://www.uwindsor.ca/jerusaleminitiative).) The security arrangements described in that assessment are designed to ensure freedom of worship, dignity, access, and equity. This point cannot be emphasized enough, given the experience of some who view the word “security” as indicative of repression rather than as a service for the community. While no arrangement can absolutely guarantee security, a sound system is achievable through coordination and the commitment of Israeli and Palestinian authorities.

#### ***3.1.2 The Old City Police Service***

The security system should take the form of an Old City police service along the following model:

*a. Structure and Authority* The police service should be headed by a chief of police appointed by the Chief Administrator, with agreement of the Old City board. The authority of the police service should be rooted in the mandate the parties entrust to the chief administrator. Under this arrangement, the Old City would be a weapon-free zone, except for the armed elements of the police. A police board would hold the chief and the police service publicly to account. Public meetings and independent assessments including public opinion surveys would assist the police board in monitoring police service performance against public expectations and an annual policing plan.

*b. General Responsibilities* The police service would work to ensure the safety and security of the Old City, including routine policing, entry and exit monitoring and control, and public-order rapid response. It would be responsible for enforcing laws, ordinances, and directives of the Old City Special Regime. Neighbourhood policing would be a major function, with neighbourhood partnerships an important element. The police service would need a public-order rapid deployment unit to deal directly and quickly with disturbances.

*c. Resources* An effective and respected police service would require significant resources, financial, personnel, training and equipment from the international community.

*d. Composition* The police service would, at least initially, include only international officers, given the lack of trust that exists between the parties. However, officers seconded from Palestine and Israel, serving as community relations officers, would perform a variety of functions to assist third-party police officers in specific neighbourhoods. They would initiate the active development of community partnerships at the neighbourhood level. This could include community meetings, the assessment of community needs and wants, and advice on local contacts and partners. As trust develops, regular officers could be recruited from the parties, at the discretion of the chief of police and the chief administrator.

*e. Area of Operation* The police service's area of operation would be within the confines of the Old City's walls, with two exceptions:

- The police would need to operate entry and exit facilities, bearing in mind that, due to space limitations at the gates, some facilities would need to be at least partially located outside the walls.
- There would have to be periodic and unchallenged police inspections of the exterior of the walls.

*f. Special Responsibilities* The police service would have particular responsibility for the protection of the Holy Sites and for the safety of pilgrims, worshippers, and visitors. The chief administrator and the chief of police would work closely with the parties, the religious communities and institutions, and the advisory religious council to establish measures to guarantee appropriate access while maintaining public safety and order. They would also work closely with these groups to define the conditions under which armed police service units would have the authority to enter Holy Sites with care, respect, and appropriate sensitivity. In a broad sense, while the special regime would have authority over all institutions in the Old City, regarding the Holy Sites its focus would be to support the religious authorities and custodians as they meet their responsibilities.

Physical security of the Holy Sites would begin at the gates to the Old City. The police role in monitoring and controlling access at the gates *inter alia* needs to be understood in that context. The degree of control would depend on the special regime's current threat assessment and would be designed to be minimally intrusive.

Given the centrality of Holy Sites and the issue of access to them by both locals and third-country nationals, a special Holy Sites police unit seems essential. The unit would maintain close relations with the religious authorities at key sites and with the advisory religious council. The composition of this unit and the special training of its members require careful consideration. We do not envision that police service offices would normally be stationed within the Holy Sites.

*g. Criminal Operations and Intelligence Units* The police service would need criminal operations and intelligence units. Both would work closely with Israeli and Palestinian police and intelligence services. Both would include seconded Palestinian and Israeli intelligence officers working in the Old City police service headquarters in order to facilitate effective communication and information sharing. The police service would maintain ties with the relevant agencies of other countries and with Interpol, and would have its own training, logistics, and administrative capabilities.

*h. Maintaining Public Order* The police service should also have capabilities for responding on short notice to crises and would maintain a public-order rapid deployment unit. Various alternatives exist for reinforcing this unit and are explored in greater detail in the Security Working Group's Security Assessment.

*i. Residency in the Old City* For reasons of security, special residency cards may be required that, under specific situations, would be verified by the Old City police service, especially at points of access.

## **3.2 Holy Sites**

### ***3.2.1 The Problem of Defining Holy Sites***

A key to the special regime's success would be its ability to protect, preserve, and maintain the Holy Sites, manage heritage preservation and archaeological activity, and provide security and safety for visitors and residents. Given conflicting claims, the special regime should adhere to a definition of Holy Sites that is clear and flexible.

Our commissioned reports have confirmed previous research demonstrating that simply defining a Holy Site can be contentious. Many sites are defined as holy by one community but not recognized as such by others or by secular authorities. Furthermore, the number of sites identified by the various communities as holy to them has proliferated over time, at least partially in response to political developments. Today, estimates of the number of sites in the Old City claimed as holy by one or more communities range from 225 to more than 300.

### ***3.2.2 A Functional Approach to the Holy Sites***

The special regime should consider Holy Sites in terms of security, heritage, and archaeological significance. Rather than entering into the debate of which site is deemed holy by which community and how that designation is justified, the chief administrator and the chief of police should view their responsibilities through the lens of public order and safety. Sites that are contested or most frequented would be the sites of particular concern; less contested or less frequented sites would normally require less focus.

### ***3.2.3 Responsibilities toward the Holy Sites***

The challenges to meeting the special regime's mandate regarding Holy Sites include the following.

*a. Ensuring Respect for Sanctity* Maintaining the sanctity of all sites deemed holy by particular faiths involves ensuring that whoever gains access follows established customs with regard to decorum and treats the site with the respect its custodians require. This includes ensuring that any excavation, maintenance, conservation, or repair undertaken in or adjacent to these sites is carried out after consultation and in accordance with international benchmarks. It also means managing, through careful coordination and exercise of authority, activities or forms of worship by one community that may be perceived by another as impinging on the sanctity of the site or the rights of other worshippers.

*b. Protecting Access* Access routes must be open to worshippers and visitors who must not face intimidation or harassment. This entails establishing effective mechanisms to accommodate rituals, pilgrimages, and processions to and from the sites on particular

festival days. It also requires the realization that there is often a tension between access and sanctity in the minds of believers, and that access is not an absolute right. There are times, places, circumstances, and occasions where public order and safety may require restrictions, as is already the case at certain Holy Sites elsewhere. This would be a matter for close consultation between the special regime and custodians of Holy Sites.

*c. Preserving the Status Quo* Technically, the term “*status quo*” refers only to the arrangements established by the Ottoman authorities in the 18th and 19th centuries.<sup>4</sup> Because of the long history of disputes over the control and use of the Christian Holy Sites, a series of understandings evolved (or were imposed) to regulate use, access, and decorum. This *status quo* was recognized in diplomatic agreements and was enshrined in the law of British Mandate Palestine after World War I. However, the term is often used more loosely to describe the entire body of rules, customary practices, and understandings that govern issues of access and usage with regard to the Holy Sites including those sacred to Jews and Muslims. Taken together, this body of arrangements and understandings permits the differing faiths and religious communities to operate in the Old City and its Holy Sites with a significant degree of order and predictability. The role of the special regime should be to ensure that these arrangements are respected and equitably administered. Any evolution of their scope and form over time must be peaceful and respectful of differing interests.

*d. Building Tolerance and Trust* It will be important to pre-empt trends toward intolerance and radicalization by fostering a culture of respect for the three faiths and the development of the Holy Sites as inspirational symbols of faith, spiritual growth, and religious harmony.

### **3.2.4 The Relationship between the Special Regime and Religious Communities**

In exercising executive authority, the chief administrator would liaise actively with a range of religious and secular authorities. Supporting the chief administrator in delivering these core mandate functions would be the Old City police service along with a religious affairs department and a heritage and archaeology department integral to the regime. These departments would be responsible for liaison with:

- the advisory religious council,
- the relevant ministries in the Palestinian and Israeli governments and in the municipalities of al-Quds and Yerushalayim on matters of national or municipal relevance,
- the Old City’s religious communities including the formal custodians of the Holy Sites, and
- international religious and cultural heritage organizations.

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<sup>4</sup> Scholars consulted during our research prefer to confine the term “*status quo*” to its original meaning and utilize the term “*modus vivendi*” or “*modus operandi*” to describe the contemporary body of rules, including those put in place under Israeli rule since 1967, and which apply today to the Holy Sites, Christian, Jewish, and Muslim. Some scholars apply *modus operandi* only to the rules that apply to Muslim and Jewish sites.

### ***3.2.5 The Management and Security of Holy Sites and Heritage***

The model we propose has five components for the management and security of the Holy Sites and heritage, which are described here.

*a. The Advisory Religious Council* The religious communities and their leaderships have a legitimate interest and concern about how a Holy Site's management and security framework would be established and operated. The existing coordination mechanism for the three religions is the Council of Religious Institutions of the Holy Land. To ensure inclusiveness, we anticipate that this council would play an important role in establishing the advisory religious council as a vehicle for communication and coordination.

However, to avoid deadlock and politicization of every issue, decision-making authority would rest with the special regime. The chief administrator and the relevant departments of the administration would inform and consult with the advisory religious council on all matters pertaining to the religious affairs in the Old City, including special planning related to holidays and festivals. The council would also participate in training for the Holy Sites police unit and would act in an advisory capacity to the police force. The council would also liaise with national and international religious and cultural heritage organizations over the development of the Old City as a place for spiritual growth and religious harmony.

*b. The Existing Custodians of the Sites* Holy Sites should remain under the authority of their existing custodians and their duly appointed successors. The internal management of Holy Sites should remain the exclusive province of those custodians and the communities they represent and serve.

*c. Relevant Departments within the Special Regime* The chief administrator would be responsible for facilitating respect for the sanctity of the Holy Sites, including, by supporting the Sites' custodians. The chief administrator would also ensure access to the Sites, to the satisfaction of the religious communities subject to the requirements of public order.

The relevant departments within the special regime, in particular the religious affairs department and the heritage and archaeology department, would be the primary instruments through which the chief administrator would liaise with the custodians and the advisory religious council to monitor whether this responsibility is being met. While the chief administrator would be the primary point of contact with the advisory religious council, the religious affairs department would interact directly with the appropriate religious institutions and their respective Holy Sites custodians at the working level. The religious affairs department would also liaise with counterpart organizations within national governments as appropriate.

*d. The Old City Police Service* The police service would be responsible for protection, as needed of the Holy Sites and for ensuring the access and safety of pilgrims, worshippers and visitors. A unit within the police service would be dedicated exclusively to the Holy Sites.

*e. Mechanisms for Special Issues* Our research has identified five areas where enhanced coordination on Holy Sites and religious activity would be desirable:

- the exchange of information on religious activities,

- the improvement of the aesthetics of holy sites and religious properties in the Old City,
- the promotion of tolerance and respect,
- the coordination of heritage maintenance and archaeological activity, and
- the facilitation of dispute resolution between religious communities.

A further Initiative discussion paper on Holy Sites is forthcoming.

### **3.3 Heritage and Archaeology**

In Jerusalem, the past is often recruited into the service of conflicting political agendas. Excavations and maintenance of archaeological sites can represent real or perceived attacks on the sanctity of another community's heritage and religious and national patrimony. Such situations can rapidly deteriorate. The responsibilities and activities of the special regime must be developed accordingly.

#### ***3.3.1 Responsibilities of the Special Regime***

*a. Managing Archaeology* To manage points of friction, the chief administrator will need a professional heritage and archaeology department that would work initially with a heritage and archaeology transitional commission, staffed by Palestinian, Israeli, and international professionals. The commission would establish a framework of rules and best practices to guide the activities of the chief administrator and staff. The heritage and archaeology department would inventory and review ongoing archaeological and heritage projects and practices. It would be responsible for establishing priorities, procedures, and criteria to ensure that the evaluation, licensing, and monitoring of projects meet UNESCO standards including the relevant Hague and New Delhi conventions. This department would develop institutional relationships with Israeli and Palestinian professional and academic institutions and with UNESCO and other relevant international bodies.

*b. Preserving Heritage* In recent years there have been controversies resulting from damage to various ancient structures as a result of climatic, environmental, and human factors. In the context of a peace agreement and the urban development and increased pilgrimage and tourism that will follow, the need to monitor the stability and safety of the walls and buildings takes on a new urgency. Working with the religious institutions, property owners, heritage organizations, UNESCO, and other appropriate bodies, the heritage and archaeology department should ensure regular inspection of structures. These inspections should be designed to detect and address maintenance, conservation, and safety problems and to identify sources of expertise and appropriate technical assistance. The department should also undertake to ensure that UNESCO be consulted and involved where appropriate. It should ensure that any material alteration at or adjacent to Holy Sites takes place only after extensive consultations and conforms fully to international norms.

*c. Authority* The chief administrator should have the authority to license archaeological excavations and the repair, renovation, or reconstruction of archaeological and heritage sites. The administrator should have the authority to suspend or terminate such activities if they fail to comply with appropriate norms or when, in the judgement of the chief administrator, they constitute an actual or potential threat to public order and inter-communal harmony. These provisions include tunnelling of whatever sort.

### **3.4 Planning, Property, and Infrastructure**

#### **3.4.1 Planning and Zoning**

*a. The Current Situation* Our research suggests that the complex political struggle for control over the Old City, the unequal application of laws and regulations, and chronic overcrowding, especially in the Muslim quarter, have resulted in *ad hoc* and extra-legal construction, degradation of ancient buildings and structures, and overtaxing of inadequate infrastructure, not to mention destructive pressures on families and communities. In many cases it is difficult, if not impossible, to provide definitive evidence of property ownership. Many holdings over 200 years old have neither title nor deed and are passed on without documentation. Other property is divided among various parties informally. This has significant implications for property ownership, zoning, planning, public health, taxation, and the environment.

*b. The Responsibilities of the Special Regime* The administration should create and implement a comprehensive urban development and conservation plan that strikes a balance between meeting residents' needs and improving living conditions, addressing environmental concerns, maintaining an appropriate commercial environment, preserving heritage, and accommodating pilgrims, tourists, and other visitors.

*c. The Old City Planning and Zoning Department* The chief administrator would need a small, highly professional, multi-disciplined planning and zoning department, bringing together qualified international, Israeli, and Palestinian city-planning experts under an international chief planner. This department's priority would be to create an urban development plan for the Old City. The planning process would require substantive consultations with the relevant units of the adjacent municipalities, and also with the inhabitants, the major property owners, including the religious institutions, and the business community. The planners will also need to create institutional linkages with UNESCO and organizations such as the International Council on Monuments and Sites (ICOMOS) to ensure that international standards are applied.

*d. Mandate of the Special Regime's Planning and Zoning Department* This planning and zoning department should take the lead in creating an urban development plan wherever possible in coordination with the planning and development programs of al-Quds and Yerushalayim. It would assume responsibility for the issuance of building permits, and no building or renovation would be allowed without a permit from the chief administrator. The special regime would also take responsibility for the enforcement of zoning, heritage, construction, environmental, and safety standards, which would be carried out by a small, empowered, internationally supervised team of inspectors.

#### **3.4.2 Land and Property Registry**

*a. The Current Situation* The Old City has no independent land or property registry recognized by the parties. The majority of buildings have neither title nor deeds. In many instances, this has not prevented normal patterns of property purchase or rental, or the resolution of disputes and claims in the courts. There are, however, cases of claims that derive from or affect the national conflict, which will have to be addressed directly by the special regime.

*b. The Role of the Special Regime* At first glance it would seem sensible to remedy what appears to be a chaotic situation by creating a land registry. Those of our advisors with

the most direct experience in property issues have advised strongly against this. Since, however, land and property issues are among the most complicated and contentious matters and since a perception of corruption in property transfers exists among some, we do not believe the matter should be allowed to lie. Rather, we advise that during the initial phase of the special regime there should be no property or land purchase, change of usage, or transfer of ownership allowed without approval from an expert committee established by and responsible to the chief administrator. This would serve to regulate and legitimize property transfers. It would, moreover, be a means of maintaining order and controlling politically motivated property changes that could threaten stability, while still allowing flexibility. This subject requires further study and is a case where the administrator may wish to establish a transitional commission to study the situation and recommend a set of rules for regulating future property transaction.

### ***3.4.3 Utilities and Infrastructure***

*a. The Current Situation* The provision of services and maintenance of basic infrastructure are uneven and inconsistent, and are provided by a mix of private and public entities. In general, the Jewish Quarter enjoys much higher standards in terms of services provided by the existing municipality, compared to the rest of the Old City. The need for the creation of a more equitable situation is self-evident in consolidating a peace agreement between a Palestinian state and Israel and in enhancing the Old City as an asset to both countries and communities.

- Services Provided by the Municipality: The current Jerusalem Municipality is responsible for sanitation, including street cleaning and trash removal (usually through private contractors), the water network, and the sewage system. In general the quality of water and sewage service to the Jewish Quarter is of a high standard. Elsewhere, lack of investment in infrastructure, poverty, and overcrowding result in considerable leakage and unknown damage to the ancient layers below the streets. Access to safe water for domestic uses is a serious issue. Our research indicates that the sewage system, which connects to the current municipal system, needs major renovation. The rainwater drainage system covers only parts of the Old City and the resultant run-off is responsible for serious structural problems. The current municipality maintains, cleans, and repairs the parts of the road system that are used by vehicular traffic and walkways that are used by the public.
- Services Provided by the Private Sector: Currently the Jerusalem Municipality plays no direct role in the provision of electricity in the Old City. Rather, electricity is provided by two private companies: JEDCO, which serves the Muslim, Christian, and Armenian quarters, and IEC, which serves the Jewish Quarter. JEDCO's infrastructure is said to be in serious need of upgrading. It has an inadequate number of transformers. The public lighting system is substandard. Telephone, television, and internet services to the entire Old City are provided by the Israeli firm Bezeq.

*b. The Responsibilities of the Special Regime* The chief administrator would establish a utilities department, responsible for issuing contracts or licences, as appropriate, to providers of services to the Old City, and would seek to privatize service provision wherever feasible. This could include contracts for street cleaning and trash removal, electricity, telephone, and cable/internet services. In addition, the utilities department of the special regime would be responsible for ensuring that contractors and licensees meet their obligations through monitoring, inspections, and public consultations. The

department would also need the authority to sanction service providers who fail to meet agreed standards or contractual commitments.

*c. Sharing Responsibility for Infrastructure* Infrastructure, including roads and water as well as sewage and rainwater drainage systems, require considerable upgrading and ongoing maintenance and repair. The question of formal responsibility over this infrastructure is a difficult one. The special regime would need a considerable source of funding to assume such responsibility over the long term and would need the authority to float bonds to finance infrastructure improvements.

*d. Coordinating Mechanism* If the decision is made to create two capitals out of the present city of Jerusalem, there may be a requirement to create an effective coordination mechanism to plan and oversee common utility, service, and infrastructure projects and processes, not to mention the economically critical issue of tourism planning, promotion, and services.

## **Part IV: Finance and Economics**

### **4.1 Finance**

A model must be developed that recognizes that the special regime will never have sufficient resources to fulfill its mandate through the Old City's own resources, even though the Old City Special Regime would have some fundraising capacity through taxation, fees, and bonds. Good governance will require substantial support from Israel and Palestine, as well as the international community.

Support from the global community is all the more imperative, given the Old City's meaning and symbolism worldwide and the threat to the Israeli-Palestinian treaty that would ensue were the special regime to fail in discharging its mandate. In the wake of an agreement by Palestine and Israel to create the special regime, the Old City board would need to organize a donors' group to ensure necessary resources and funds.

### **4.2 Economics<sup>5</sup>**

General estimates indicate that, as a result of a peace agreement that includes the recognition of two capitals in Jerusalem by the international community and the implementation of a special regime, the situation would yield more than 9,000 new jobs in the Jerusalem conurbation. This situation would result from increased international involvement and a stable environment in Jerusalem. Approximately two thirds of these jobs would, we estimate, go to local residents, with each new job in turn fuelling the local economy through the consumption of goods and services. Using a multiplier of two, more than 18,000 jobs would be created for Jerusalemites in the service sector. The total number of new jobs for the local population would be close to 24,000, an approximate 10 percent increase in employment for the conurbation. New jobs as a result of construction have not been factored into these estimates, since a building boom would be less predictable in duration. Specifics of anticipated growth include the following.

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<sup>5</sup> Economic issues have been studied in detail by Joseph B. Glass and Rassem Khamaisi in the "Report on the Socio-Economic Conditions in the Old City of Jerusalem," available at [www.uwindsor.ca/jerusaleminitiative](http://www.uwindsor.ca/jerusaleminitiative). We have based our preliminary estimates on the results of this work.

#### **4.2.1 Diplomatic Representation**

The economic impact of the movement of 85 existing embassies from Tel Aviv to Jerusalem, establishment of full embassies to the new Palestinian state in al-Quds and the opening of new embassies from Arab and Islamic countries in the wake of a peace agreement could result in as many as 150 embassies, 3,000 foreign diplomats and dependants, and as many as 5,000 new jobs for Jerusalemites.

#### **4.2.2 Old City Administration**

The establishment of a special regime would involve the arrival of several hundred expatriates, a concomitant requirement for accommodation, goods, and services, and as many as 500 new jobs for local inhabitants.

#### **4.2.3 Tourism**

Our research points to the arrival of between 3 and 5 million tourists in the Holy Land annually once peace is established. The Israeli Ministry of Tourism calculates that each additional million tourists create 45,000 new jobs. If the 5 million figure is realized the Jerusalem share could be as high as 28,125 new jobs.

#### **4.2.4 Impact**

The growth that can be anticipated with the signing of a peace agreement would include several essential improvements — to the existing and planned road and rail systems, to infrastructure in East Jerusalem and the Arab sections of the Old City, and to effluent management systems — as well as expansion of the water distribution system and the electrical grid. Taken together these pose serious planning and environmental challenges, which would require the creation of new coordinating mechanisms between the states and the municipalities. They also would demand serious investment and create additional employment.

### **Part V: Conclusion**

Typically analysis of possible solutions to the conflict over the Old City of Jerusalem looks at three options: 1) sovereignty and control in the hands of Israel, 2) sovereignty and control in the hands of the new Palestinian state, and 3) the division of the Old City between the parties as, for example, in the Clinton parameters and the Geneva Accord. Options 1 and 2, where sovereignty and control are exclusively in the hands of one party or the other, will not result in a peace agreement. Option 3, a simple division of sovereignty within the Old City, given the unhappy history of cooperative efforts by the parties and the legacy of a century of conflict, would, for the foreseeable future be untenable as well.

Recognizing that it is very difficult for governments to undertake this kind of study, this discussion document represents our best attempt to present a “fourth option” for the Old City, neither control by one party at the expense of the other nor split governance. While we are convinced the prospects for peace and reconciliation exist and can be realized with good will and hard work, we do not believe that the Old City can be governed effectively by the two parties alone until trust builds over time with the successful implementation of the peace treaty. When that time comes – earlier or later – we believe that a third party role, scaled to the tasks it is assigned, would still be needed to assist the Parties to implement their agreement.

The area within the walls goes to the heart of the Muslim, Jewish, and Christian belief systems. An atmosphere of systemic distrust has dominated issues, as in the whole of the Middle East conflict. The significant difference in the walled city is that sacred space is indivisible, whereas territories that have been the subject of dispute between Israel and Egypt, or between Israel and Jordan, for example, are divisible — and have been divided — by borders. Elements among the parties can therefore be expected to expend considerable effort to profit at the expense of the rights and needs of the other for some time after a peace agreement is signed.

The Old City is seen by each national community as the centre of its identity. We recognize that to invite outside participation in governance within the walls requires great trust and flexibility. We fear that without such a fair-minded governance mechanism, the Old City would soon be at risk and any peace agreement with it.

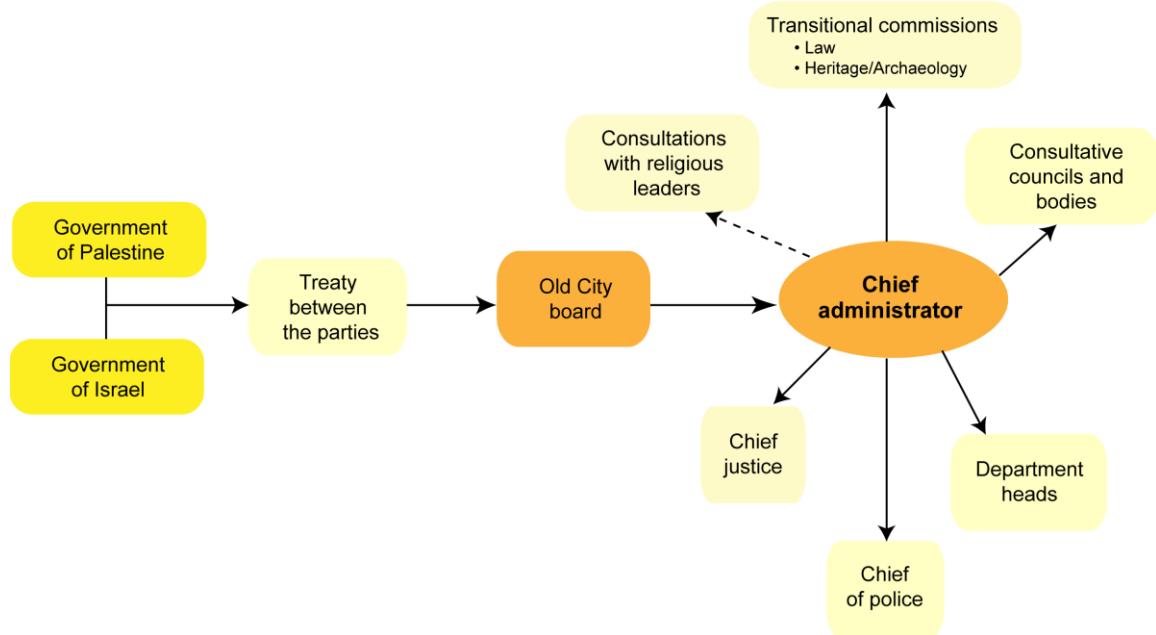
We also realize that many on both sides would prefer a string of joint consultative mechanisms to protect and maximize their interests as issues arise. This, as well, we understand. We believe, however, that in the absence of a clear-cut decision-making authority, where responsibility is recognized and untrammelled, no system will be sustainable and no comprehensive peace achievable. For this reason, we put forward what we believe to be a creative option for both sides and for those across the world interested in stability and tolerance in this most sensitive of places.

It should be reiterated that while we consider the option of the special regime is best taken in its entirety, this proposal is designed in such a way that it can be used in whole or in part. Rather than an explicit blueprint, it offers a model that can be followed or adjusted as seen fit by the parties.

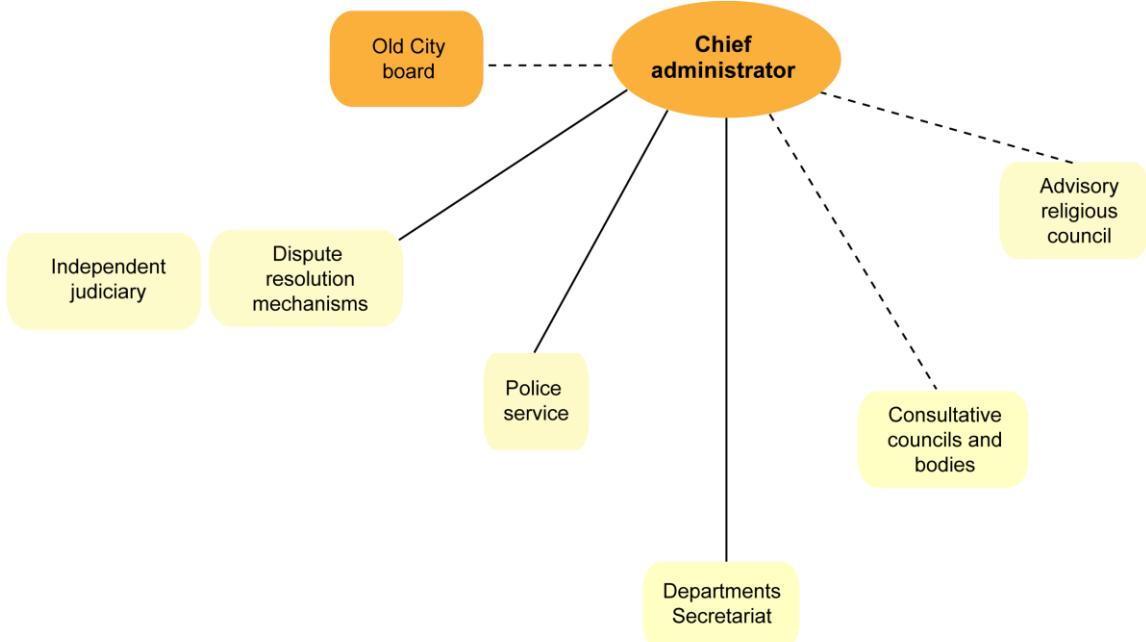
Further study is required regarding the complex issues of property ownership and the legal system; however, we believe this document provides the details and options under such a model, especially regarding critical matters of security, the Holy Sites, and the overall governance structure of an Old City Special Regime.

## Annex A: Organization Charts

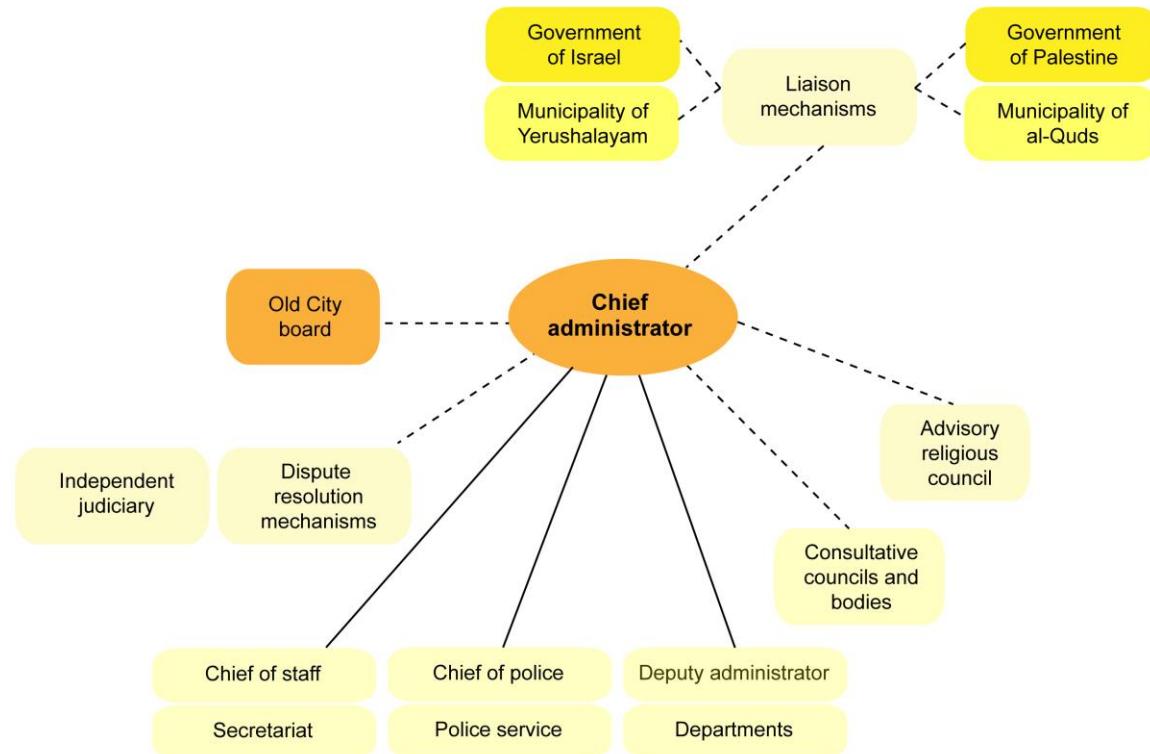
### Establishing the Old City Special Regime



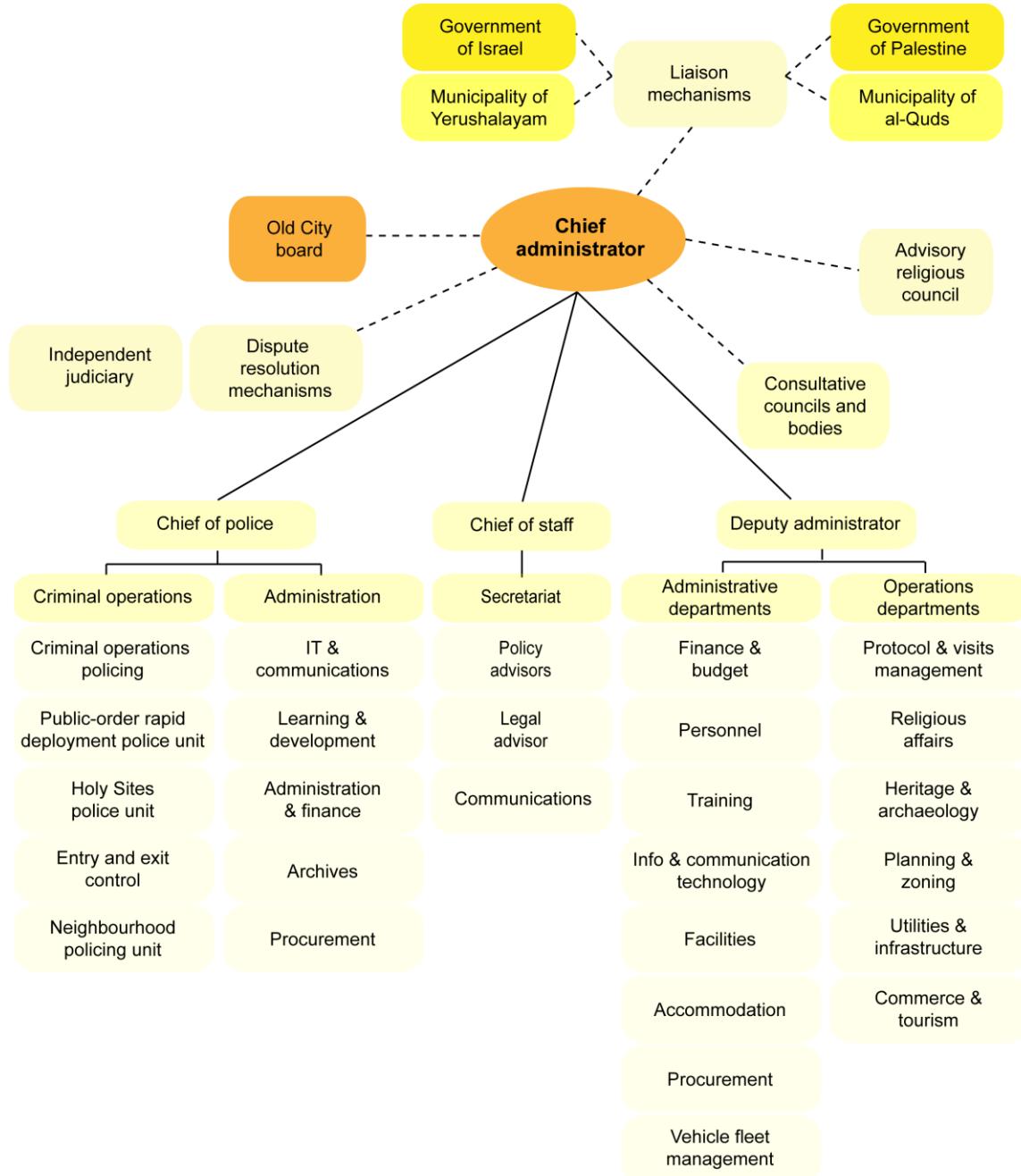
### Overview



## Final State Overview



## Final State Detailed



## Annex B: Contributors

### Jerusalem Old City Initiative Management Team

**Michael J. Molloy** (*Co-director and Chair, Governance Working Group, Jerusalem Old City Initiative*) was Special Coordinator for the Peace Process (2000–03), Canada’s Ambassador to Jordan (1996–2000), and Senior Advisor to the Canadian delegation to the Refugee Working Group (1993–96).

**Michael Bell** (*Co-director and Chair, Security Working Group, Jerusalem Old City Initiative*) teaches at the University of Windsor. Former chair of the Donor Committee of the International Reconstruction Fund Facility for Iraq, he spent 36 years in the Canadian foreign service, serving as ambassador to Jordan (1987–90), Egypt (1994–98), and Israel (1990–92 and 1999–2003).

**John Bell** (*Director, Jerusalem, Jerusalem Old City Initiative*) is the Director for the Middle East and Mediterranean Program at the Toledo International Centre for Peace. He was Middle East Director for Search for Common Ground (2005–08) and is a former Canadian and United Nations diplomat who served as political advisor to the Personal Representative of the Secretary General of the United Nations for southern Lebanon (2000–01).

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