

Mandate Elements for the Old City Special Regime

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The Old City encompasses all aspects of the Israeli-Palestinian conflict. With overlapping claims, systemic distrust, multiple stakeholders, deep religious divides and the impracticability of physical division, we believe options splitting Old City governance are problematic. We do not believe agreement on sovereignty is likely in the foreseeable future, although we would prefer agreement between sides to this end.

Yet, if there is no sustainable, practical solution to the problem of Old City governance, there will be no peace between Israelis and Palestinians. We are therefore proposing, as a transitional mechanism, a Special Regime, led by a Chief Administrator, operating under the authority of a Palestinian/Israeli based Governance Board and responsible to it.

Core elements of the Old City Special Regime include:

- The Old City as a distinct unit with a distinct legal personality under the executive authority of a single Chief Administrator accountable to a Governance Board;
- The Governance Board as the oversight authority of the Special Regime;
- The Chief Administrator appointed for a fixed renewable term by the Board, the latter consisting of senior representatives of the Israeli and Palestinian governments and select other countries and institutions as may be agreed by Parties;
- Special Regime responsibility for specific aspects of governance including policing, heritage, archaeological oversight, access, planning, zoning, property registration and transfer and ensuring equal status for all residents and visitors;
- Chief Administrator consultations, as appropriate, with:
 - a Religious Council which will provide guidance and facilitation related to management of ritual worship, access, and Holy Sites;
 - international advisory bodies on cultural heritage, in close co-ordination with Palestinian and Israeli authorities and institutions;
 - expert committees to develop legal and regulatory frameworks;
 - Palestinian and Israeli intelligence and security authorities;
 - the governments of Israel and Palestine and the municipalities of Al Quds and Yerushalayim.

- All powers not specifically allocated to the Special Regime being the responsibility of the Parties;
- Direct Palestinian and Israeli responsibility for particular functions respecting civil matters affecting their respective nationals *inter alia* education and family law;
- Israeli and Palestinian residents to carry either Israeli or Palestinian citizenship, with their political rights secured through participation in the political processes of their country of citizenship;
- Freedom of worship secured and guaranteed, according to established practice;
- A Police Service with a Chief of Police, heading a unified command structure accountable to the Chief Administrator; members of the service recruited individually according to a list of countries agreed by the Parties;
- Israelis and Palestinians to participate in the Police Service as “community liaison officers”;
- Police Service responsibilities to include maintenance of public order, counter-terrorism, entry and exit control to and from the Old City, enforcement of criminal and specific civil laws, security and intelligence responsibilities and community policing;
- Close Police Service liaison with Israeli and Palestinian police and security services;
- The Old City as a “weapons-free” zone, excepting the Police Service.

We recognize that the Special Regime will not fully satisfy all the objectives of the Parties, but are convinced such a Regime can go a considerable way to accommodating their respective needs and ensuring a secure and sustainable future.

There continues to be variance among both our local and international partners respecting components of the plan. Our goal has been to encompass as many common elements as possible and add to them, or modify them, only where we believe sustainability, the *sine qua non* of success, would be otherwise compromised.

The documents published by the Jerusalem Old City Initiative since its inception reflect the evolution of our thinking. This Mandate paper is the most recent expression of our ideas. We have taken the view that our work is best understood as a kind of “rolling draft” subject to change as new ideas come to the fore and as circumstances require.

Our efforts have been greatly enhanced by David Cameron of the University of Toronto and Arthur Hughes, formerly of the US State and Defense Departments, and currently the Initiative’s Washington Coordinator, who skillfully drafted the document which follows.

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Rolling Draft: February 2010

1) The Peace Treaty

- a. In their peace treaty the Parties (Israel and Palestine) will create a Special Regime to govern the Old City (that part of Jerusalem within and including the existing walls both above and below ground) as a single entity.
- b. The Special Regime will not prejudice the claims of either party regarding sovereignty over the Old City.
- c. The Special Regime will replace Israeli governance.
- d. The Treaty provisions (including the associated documents) together with a UN Security Council resolution of endorsement will be the Source of Authority and constitute the Mandate for the Special Regime.
- e. The Treaty will create a Governance Board to be the oversight authority of the Special Regime. The Board will appoint a Chief Administrator as executive authority.
- f. The Parties will agree to fund the Special Regime with assistance from the international community.
- g. The parties will agree that neither will attempt in any way, by action, verbally or by means of a third party, to assert or implement their respective sovereignty.

2) The Special Regime

- a. The Special Regime is the practical means by which the Parties will jointly address their responsibilities and interests without prejudice to their respective claims of sovereignty over the Old City.
- b. The Special Regime will have its own legal personality.
- c. The Special Regime will have a Chief Administrator with specific authorities and powers, appointed by the Governance Board, to ensure effective and just governance and administration of the Old City, the rule of law and equality under the law for its residents and visitors, as well as security, public order and safety.
- d. The Old City will be a weapons-free area, except for the international members of the Old City Police Service.
- e. Freedom of religion and worship will be guaranteed by law.

f. The Special Regime will work closely and actively with religious groups and institutions to:

- protect and preserve the religious sites;
- maintain decorum and public order;
- uphold the status quo and agreed customary practice;
- promote religious tolerance and respect.

g. The existing arrangements, roles, and responsibilities of the religious authorities and custodians of the religious sites will continue as provided by the Parties in their peace treaty.

h. The Special Regime will be responsible for security, public order and safety, city planning and zoning consistent with the preservation of the character of the Old City, real property registration and transfer, environmental protection, archeology, including the preservation of historical sites, the provision of essential public services and any other domains as the Parties may decide.

i. All powers and functions not specifically allocated to the Special Regime shall be the responsibility of the Parties, including education, family law, religious practice, health, tourism promotion, culture, contract law and commercial law except insofar as they involve security matters.

j. The Special Regime will have its own distinct legal personality limited to the mandated responsibilities enumerated in 2) h. above and will work with Israel and Palestine to ensure that their legal systems, and that of the Special Regime, constitute a coherent overall legal framework for the Old City.

k. Residents will be invited to form advisory bodies to provide information and counsel to the Special Regime on the issues affecting them which fall under the authority of the Special Regime.

l. Citizens of Palestine and Israel who are resident in the Old City will exercise their political rights by means of participation in the political processes of their countries of citizenship.

3) The Governance Board

a. The Governance Board will be the oversight authority of the Special Regime.

b. Palestine and Israel will create the Board within 90 days of signature of the peace

treaty between them.

c. The Board will consist of representatives of the Parties and of such other states and international organizations as may be agreed by the Parties.

d. Membership will be for three years, renewable.

e. Within 90 days of the creation of the Board, it will appoint a Chief Administrator as its agent and representative to exercise the executive and regulatory powers of the Special Regime. The Board may seek suggestions for this position from the international community.

g. The Board will also:

- hold the Chief Administrator accountable for the execution of the Mandate contained in the peace treaty,

- require the Chief Administrator to appear before it on matters affecting interpretation of the Mandate,

- approve the legal regime proposed by the Chief Administrator and exercise decision-making authority over any modification of the legal regime recommended by the Chief Administrator.

- be available to the Chief Administrator;

- exercise specific other authority as specified in the Mandate such as the approval of the appointment of the Deputy Administrator, the Police Service Chief and the Police Monitoring Board;

- undertake the financing of the establishment and operation of the Special Regime, funding to begin upon appointment of the Chief Administrator;

- approve the annual budget of the Special Regime;

- have the authority to replace the Chief Administrator, should it so choose.

h. The Governance Board will not involve itself in the day-to-day operations of the Special Regime nor in the direct governance of the Old City.

i. All decisions of the Governance Board will be taken after discussion and deliberation among all members of the Board. Decisions relating to the authority and Mandate of the Special Regime, as stipulated in the Treaty and associated documents will require the agreement of the Parties (constitutive decisions). Other decisions (management decisions) will require a simple majority vote of the members of the Governance Board.

j. Any member may delay voting once on any issue until a subsequent board meeting that may be held only after 15 days have passed.

k. Each member will have one vote. A quorum will be a majority of the membership including both Parties.

l. The Board will decide its procedural rules and the Parties will provide administrative and technical support.

4) The Chief Administrator

a. The Chief Administrator will be appointed by and be accountable to the Governance Board;

b. The Chief Administrator will be responsible for implementation of the Mandate contained in the peace treaty, its associated documents and the related UN Security Council resolution. He shall also be responsible for the direction and functioning of the Special Regime in the fulfillment of its responsibilities to the Parties and of those to the residents, visitors and institutions of the Old City;

c. He will be guided by the principles articulated in the entirety of the treaty;

d. He will have executive and regulatory powers;

e. He will present formal reports to the Board semi-annually regarding the functioning of the Special Regime. Such reports will include a review of the operations of the Special Regime in the reporting period, annual outside audits of the finances and internal controls, and annual proposed budgets. Governance Board decisions related to these matters will be regarded as management decisions, as described in 3) i. above;

f. The Chief Administrator will appear before the Board upon its request and it will meet with him at his request;

g. The Chief Administrator will not be a citizen of Israel or of Palestine.

h. The term of office will be five years, renewable for one additional term.

i. The Governance Board may replace a Chief Administrator before the end of a term;

j. The Chief Administrator is authorized to make and enforce regulations, to establish the Police Service and administrative apparatus and to engage staff, to institute legal proceedings, to contract, to acquire and dispose of property and to take whatever other actions as may be necessary and proper in fulfillment of his responsibilities;

k. The Chief Administrator may, as appropriate, invite the establishment of advisory

bodies composed of residents and others who have ongoing links with the Old City. Such bodies will be invited to offer advice that the Chief Administrator may take into account as he carries out his executive and regulatory responsibilities;

l. The Chief Administrator may consult and cooperate with members of the international community, including diplomatic missions accredited to Palestine and Israel, on matters of interest or concern to the Old City, its institutions, and to its residents and visitors;

m. The Chief Administrator will appoint, with the agreement of the Governance Board, a Deputy Administrator who, in the absence of the Chief Administrator from Palestine, Israel and the Old City, will have the authority of the Chief Administrator. The Chief Administrator will notify Israel and Palestine in advance on the occasions when such a transfer of authority will occur.

n. The Chief Administrator will appoint, with agreement of the Governance Board, the Chief of Police Service.

5) Religious Matters

a. Freedom of access, religion and worship for all residents of and visitors to the Old City will be guaranteed by law, with appropriate access to the Holy Sites, based on customary practice. These rights shall be subject to the requirements of security, safety, public order and decorum;

b. The Special Regime in itself will not affect existing bilateral or international agreements of the Israeli or Palestinian authorities regarding religious matters, nor the present arrangements for residency of religious persons within the Old City;

c. The Special Regime will have no responsibility for the internal management of the Holy Sites, but will be responsible for security, ensuring respect for customary practice, public order and safety, including the structural soundness of the sites.

d. Management of the sites will remain the province of the custodians and religious groups and communities they represent and serve;

e. Religious groups, communities and authorities will be invited to establish an Advisory Religious Council to foster cooperation and development of constructive relations among them and to coordinate matters of common interest with the Special Regime administration;

f. The Special Regime will maintain close discussions and liaise with the Council on appropriate matters pertaining to religious affairs in the Old City, including security, preservation, maintenance of access to and sanctity of the Holy Sites, and planning for major religious observances and festivals;

g. The Special Regime shall work closely with the Council and other religious institutions to promote tolerance.

6) Security, Public Order, Safety

a. The Old City will be a weapons-free area except for Old City Police Service officers. Any divergence from this will require permits from the Police Service.

b. Israel and Palestine will ensure that the Old City is weapons free upon entry into force of the Special Regime;

c. The Special Regime will have an Old City Police Service responsible for enforcing laws, regulations, ordinances and directives in effect in the Old City;

d. The Police Service will have full authority to investigate, question, arrest, detain and transfer to the appropriate Palestinian and Israeli authorities suspects in accordance with law, accepted international norms and human rights standards;

e. As soon as possible after his appointment, the Chief Administrator will appoint, with agreement of the Governance Board, a Police Service Chief.

f. The Police Service Chief will not be Israeli or Palestinian;

g. The Police Service Chief will report directly to the Chief Administrator;

h. The Police Service Chief will design and recommend a Police Service to the Chief Administrator with emphasis on neighborhood policing with community partnerships and the ability to monitor and control entry into and exit from the Old City, in close cooperation with Israeli and Palestinian services;

i. The armed Police Service will consist only of international officers, thereby excluding citizens of Israel and Palestine. These international officers will be recruited by the Special Regime from countries agreed by the Parties;

j. The Special Regime will recruit Palestinians and Israelis to serve alongside their international colleagues as unarmed Community Officers. All will be under the command of the Police Service Chief;

k. Palestinian and Israeli police, security and intelligence services will have no authority within the Old City. The Old City Police Service will have a cooperative relationship with those services and will work closely with them on matters of interest to them;

l. The Parties will agree to post Israeli and Palestinian liaison officers at Old City Police Service headquarters and establish real time communications protocols to ensure close cooperation and effectiveness;

- m. The Police Service will maintain close liaison with services of relevant countries and of international organizations such as INTERPOL;
- n. The Police Service will give special attention to ensuring respect for the sanctity of the Holy Sites in cooperation with the custodians of the sites;
- o. The Police Service will have integral rapid reinforcement capability, including expert units for special circumstances. The Police Service will also have criminal, counter-terrorism, intelligence, explosives training and support units;
- p. The Chief Administrator, on the advice of the Police Service Chief and with agreement of the Governance Board, may conclude agreements for special units that could be called in should the Chief Administrator and Police Service Chief determine the existence of extraordinary requirements not manageable by integral Police Service units;
- q. When requested by the Chief Administrator, the Parties will agree to facilitate entry into staging areas and movement of these units with their arms and equipment through their territories to the Old City;
- r. The Chief Administrator will establish, with agreement of the Governance Board, a Police Board to monitor the Police Service and its operations. Monitoring will include public meetings and independent assessments;
- s. The Parties agree to provide fire safety and first responder services to the Special Regime, including specifically ambulance, rescue and firefighting capability. These functions will be coordinated by means of the Israeli and Palestinian liaison at Police Service Headquarters;
- t. The Parties will ensure that incitement or actions against the Special Regime and the Old City will not occur from their territories.

7) The Legal System and Civil Issues

- a. The Parties will have jurisdiction over their respective citizens for all matters not falling under the authority of the Special Regime.
- b. For third country nationals, the law of the country from which persons enter the Old City will apply, with the exceptions specified in section 7) d. below;
- c. With the endorsement of the Governance Board, a distinct legal personality for the Special Regime will be established by the Chief Administrator and apply to those matters falling under the Special Regime Mandate listed above in section 2) h.;
- d. The legal system will include a mechanism to determine jurisdiction in cases involving

citizens of both states, cases involving Old City residents and third country nationals, and cases involving exclusively third country nationals;

e. In developing the legal system for the Old City in the areas of responsibility specified in section 2) h above, the Chief Administrator will appoint a panel of Palestinian, Israeli and international experts. In selecting members of the panel, the Chief Administrator will give full consideration to suggestions from the Parties;

f. The panel will develop, for recommendation to the Chief Administrator, a legal system based on existing law, Palestinian law and international law as appropriate;

g. During the interim period, that is the time between appointment of the Chief Administrator and entry into force of the distinct legal system of the old City, existing legislation deemed relevant by the Chief Administrator and the Governance Board will continue to apply;

h. Existing legislation prejudicial to the interest of either Party such as that pertaining to absentee property, residency and the annexation will become inoperable within the Old City on the coming into force of the peace treaty;

i. Under his authority and responsibility for public order and safety, the Chief Administrator will develop dispute resolution mechanisms, utilizing existing mechanisms as appropriate;

j. The Chief Administrator will develop regulations for residency and presence in the Old City. Denials for either Palestinians or Israelis will require advance consultation with appropriate officials of the relevant Party;

k. Changes in the Special Regime legal system may be required from time to time. Such changes will be formalized on the decision of the Chief Administrator and the endorsement of the Governance Board.

8) Archeology and Excavation

a. The Chief Administrator will develop and enforce regulations, procedures and institutions to include standards, consultative processes, assessment applications for licensing, monitoring and excavation and, if necessary, suspending such activity;

b. The Chief Administrator will appoint a panel of experts to provide analysis and advice based on UNESCO and other established international standards.

9) Planning, Zoning and Property

a. Prior to the establishment of a distinct legal system for the Special Regime there will be no property or land purchases, change of usage or transfer of ownership without the approval of the Chief Administrator, who will establish a committee of experts to advise him. Those

aspects of the legal system affecting these issues should be developed on a priority basis;

b. The Chief Administrator will develop and implement, subject to the concurrence of the Governance Board, a comprehensive urban development and conservation plan for the Old City that balances the needs of residents, improves living conditions, addresses environmental concerns, conserves heritage buildings and structures, maintains an appropriate commercial environment and accommodates pilgrims, tourists and other visitors;

c. The Chief Administrator will create a multidisciplinary planning and zoning department. Under his direction that department will assume responsibility for the issuance of building permits, structural safety inspection, heritage protection and environmental standards enforcement. It will advise the Administrator respecting urban infrastructural and utilities issues;

d. The Chief Administrator will consult the various stakeholders to determine the feasibility of creating an Old City property registry.

10) Urban Services, Utilities, Infrastructure, Environment

a. The Special Regime will cooperate with Palestine and Israel and ——their respective municipalities to ensure that effective public services, utilities and infrastructure are constructed, maintained, updated and provided on a reliable basis;

b. Operations and annual and long-term capital and maintenance budgets will be prepared jointly by the Parties and the Special Regime;

c. The Parties will meet the costs of such budgets;

d. The Special Regime will ensure environmental regulations and practices of a high standard.

11) Administration, Economic Matters, Liaison and Facilitation

a. The Special Regime will not apply duties on goods and services entering or leaving the Old City;

b. Licenses, charters, permits and other authorizations issued by Palestine and Israel for banks, insurance companies, law firms and attorneys, notaries, guilds, labor unions, chambers of commerce and other institutions necessary for economic activity will also be valid in the Old City;

c. Palestinian and Israeli currency will be legal tender within the Old City;

d. The Parties agree that their respective authorities and agencies will cooperate fully with the Chief Administrator and his staff in the fulfillment of Special Regime responsibilities. To this end they will designate appropriate officials to act as interlocutors with the Chief

Administrator and his staff;

e. The Chief Administrator will establish a liaison system to ensure prompt and ongoing dialogue, collaboration and cooperation with appropriate officials of the Parties and their respective municipalities;

f. The Parties will facilitate the work of the Chief Administrator and Special Regime, *inter alia*, by facilitating passage through their territories to and from the Old City of Special Regime staff and contractors.

g. The Parties will provide radio and television frequencies at no cost both for the internal use of the Special Regime and for public service broadcasting.

h. The Parties will assist with the importation of equipment including arms and special equipment for the Police Service.

i. The Parties will not restrict the entry of goods, including letter and package mail for Special Regime use and that of its staff and direct contractors;

j. The Parties will not levy taxes, fees or any other charge on purchases including imports by the Special Regime for use by the Regime or any of its staff or its direct contractors;

k. Postal and telecommunications services will be offered by the Parties or their licensees and Israeli and Palestinian post offices will be open for public use;

l. The Parties shall make available to the Chief Administrator public property, facilities, records, and archives within or relevant to the Old City as requested by the Chief Administrator to fulfill his mandate;

m. The Chief Administrator will establish his office and if possible, the greater part of the Special Regime administration within the Old City. Because of space constrictions and special needs, such as for Police Service training and other facilities, the Chief Administrator may also acquire facilities including housing outside the Old City within Palestine and Israel. The Parties agree to facilitate such acquisitions, which will be free of all taxes, fees, levies and assessments;

n. The Chief Administrator will reside within the Old City;

o. The Chief Administrator may establish administrative and support systems to provide for and sustain the operations of the Special Regime. This may include a vehicle fleet registered and licensed by the Special Regime and a procurement system based on best practices and transparency. The Chief Administrator will seek to focus purchases in Israel and Palestine but there will be no quotas, and purchasing will be conducted according to the norms of tender law;

p. The Chief Administrator and his staff and direct contractors of the Special Regime will

enjoy privileges and immunities in accordance with common international diplomatic practice, including while outside the Old City within the territories of Israel and Palestine. The Chief Administrator will issue appropriate identification documents for this purpose and notify Palestine and Israel accordingly. Such persons' entry into and exit from Palestine and Israel and passage into and out of the Old City will not be hindered in any way by the Parties;

q. All premises of the Special Regime whether in the Old City or within Palestine or Israel will be inviolable.

12) Entry into Effect

a. The Special Regime will assume authority ____ and remain in effect until such time as the Parties may agree on successor arrangements for the Old City.

b. The Parties will invite all members of the international community to acknowledge the unique role and status of the Special Regime and to offer support to Palestine and Israel to ensure their ability to provide the services to the citizens of the Old City for which they are responsible.