

Jerusalem Old City Initiative
Consultation Paper for the
Governance Discussion Document

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i – Introduction

- a. Resolution of the Israel-Palestinian conflict is critical to relations between the Islamic, Jewish and Christian worlds, and to peace between Israelis and Arabs.
- b. This prolonged conflict is a major cause of insecurity, confrontation, injustice and suffering. At its core is the dispute over the control over Jerusalem's Holy Sites, the most important of which are located in the Old City. Within the Old City's walls contested sacred space is often literally indivisible. These sites are powerful religious and emotional symbols which must be administered fairly, and be seen to be administered fairly by all stakeholders, if their most profound needs are to be met. Without this, Middle East peace is unattainable.
- c. Hence, the Jerusalem Old City Initiative. We believe special governance arrangements, treating the Old City as a single entity under a Chief Administrator, appointed by the parties, are essential. We have labeled these arrangements "the Special Regime". Our intent in this heuristic document is to advocate that the integrity of the Old City be maintained as a single entity: the area is too small, densely populated and architecturally linked to be divided and managed by a series of separate authorities and police forces. We are convinced that deep seated mistrust between the parties makes shared authority or physical division unsustainable.
- d. To guarantee fair access to the Holy Sites for Jewish, Muslim and Christian believers, safety and security need be assured within the Old City as a whole. Virtually every issue within its walls has the potential to develop into a serious crisis among differing individuals, believers and communities. Any sustainable arrangement must assure peace, order and good governance by ensuring that a single authority, in this case the Chief Administrator, enjoys a clear and unimpeded mandate enabling him/her to act to preserve public order.
- e. The Old City Special Regime would necessarily exist as a separate governance entity located between Israel's capital in Jewish Jerusalem, Yerusalaim, and Palestine's capital in East Jerusalem. Al Quds. The nature of governance in such a conurbation would, of course, requires close co-ordination on municipal issues and on broader issues with the two national governments concerned. Such a system will also require sustained international financial and moral support.
- f. This is the culminating discussion document in a series of papers detailing the characteristics and requirements of the Special Regime. Earlier documents examine and propose solutions focused on security and Holy Sites. These studies and accompanying research and policy papers are available on line at: www.uwindsor.ca/jerusaleminitiative

ii – Rationale

1. Our recommendations in this document, and in the previous documents, are intended to spark the imagination of negotiators, political leaders and policy planners, and provide them with concrete solutions and practical tools.

2. Resolving competing claims in Jerusalem represents one of the most difficult challenges that must be addressed in any Israeli-Palestinian peace agreement. Competition over Jerusalem's Old City and its Holy Sites represents the core of this challenge.
3. The Old City of Jerusalem encompasses all aspects of the Israeli-Palestinian conflict: political, demographic, security, economic, social, religious, and environmental, among others. It is the central focus for the national aspirations of Israelis and Palestinians. It encompasses overlapping sacred space, holy to Jews, Muslims and Christians worldwide, above all in the Temple Mount/Haram Ash-Sharif. The walled area itself is small and densely populated with a potent global cultural heritage.
4. Israeli-Palestinian negotiators will have to deal with and master the complexities of Old City governance if they are to achieve a comprehensive solution to the Israeli-Palestinian conflict. The search for a solution will be further complicated by the systemic distrust that exists between the sides with respect to the other's behavior and intentions, in particular with respect to Holy Sites and their surroundings, property ownership and security.
5. The Jerusalem Old City Initiative (JOCI) was established to pursue the development of creative governance and management options for Jerusalem's Old City. For more than 4 years, we have done this in close consultation with Israeli, Palestinian, regional and international experts and advisors.
6. Based on our consultations, we have come to believe that governance solutions based on the notion of dividing the Old City are problematic, given the overlapping claims and aspirations and the historic fabric and patterns of life in this small area. We have also come to believe that options proposing to manage the area through a mix of different authorities and security forces are not viable.
7. We have concluded that the challenges posed by the Old City demand special governance arrangements to address the needs of all sides and maintain the integrity of the walled city, facilitating sustainable governance, security, and resolution of any future conflicts. We therefore are recommending the development of an Old City "Special Regime".

Part I – Overview of the Special Regime

1.1 – Core Features

Any successful Special Regime for the Old City will need to take into account the needs, interests, and sensitivities of all stakeholders, while putting in place a system that can effectively manage and facilitate the normal functioning of the Old City. In doing so, any such regime must have certain key characteristics:

- a) **Israeli/Palestinian ownership:** A Special Regime for the Old City of Jerusalem would have to be created and embraced by and embraced by both parties, who would be its source of authority. The regime and its mandate would need to be integral parts of a peace treaty between Palestine and Israel, and these two parties, together, would need to compose an executive body to which the Regime would be ultimately accountable.
- b) **Relevant under any Sovereignty scenario:** The proposed Special Regime does not seek to and need not resolve questions of sovereignty. Moreover, the Regime would be relevant in a range of sovereignty scenario the parties might adopt or in the event that the sovereignty issue is left open for future resolution. If the parties reach an agreement regarding sovereignty the Special Regime is likely to be the optimal system, with the parties delegating functions. If the parties cannot agree or choose not to assert their sovereignty claims, or prefer to defer them until such time as there are better relations and more confidence between them, the proposed arrangements provide a practical and sustainable mechanism for management of the Old City in the interim.
- c) **International support and participation:** A Special Regime would require substantial third-party presence to overcome the distrust between the sides. Particularly in the short-term, such third-party participation would be central to the regime meeting the legitimate safety/security, emotional/psychological, religious and material needs of the Old City's many stakeholders. We realize that this element may raise concerns respecting perceived or real impacts on sovereignty. We thus emphasize that the proposal does not seek to resolve and would not prejudice sovereignty claims of either side.
- d) **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 and self-governance, and the consent and consultation of the parties, including, most importantly, their agreement to the establishment of this entity. The Regime itself would require clear lines of management and authority, and the capacity to maintain public order and react rapidly and effectively in case of crisis, among other goals. Given national aspirations and claims, and the other complexities of the area, we also recognize that any successful administration of the Old City's complex and diverse society will require sustained support and active participation of local representatives of its existing social, religious, and institutional bodies.
- e) **The Urban Fabric:** To the greatest degree possible the Special Regime would need to preserve the urban fabric that connects the Old City and the rest of Jerusalem.

Arrangements for the Old City cannot be divorced from the overall political and security climate, nor from the larger conurbation of Jerusalem. Few Old City residents live their lives strictly within the confines of the Old City walls; most have family and 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 ties, and the legions of tourists and pilgrims eager to visit their Holy Sites within and outside the walls, make it inseparable from Jerusalem as a whole. Very few 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.

- f) **Focus on "Place" versus "People":** The Old City, defined by the Old City walls and containing important and contested religious and historical sites, clearly demands special governance arrangements. However, such arrangements must recognize that inhabitants of the Old City are part of their own larger communities extending beyond the walls, and that these communities already have in place legal, social, and cultural structures to address many or most aspects of their daily lives. A workable Special Regime must thus seek to focus more on "place" than on "people," addressing those functions that are quintessentially of the Old City, and to the greatest possible extent leaving undisturbed the existing natural linkages between the residents of the Old City, the rest of Jerusalem and their states, Israel and Palestine. Resident of the Old City will remain citizens of Palestine or Israel.

On the above basis, a Special Regime would be established through an agreement between Israel and Palestine, with the support and endorsement of the international community, as part of a final status agreement between the parties. The agreement between Palestine and Israel would constitute the source of authority of the Special Regime and include its mandate. In the context of a peace agreement that establishes two sovereign national capitals, Al Quds and Yerushalayim, the agreement would assign a special status to the Old City, treating the area as a single unit.

1.2 – Mandate, Geographic Scope, and Duration of the Special Regime

Certain defining elements of the Special Regime would need to be specified in the agreement that creates the Regime, ratified by both parties. At a minimum, such a ratifying document would need to establish:

1. **The Mandate:** The Special Regime would be responsible for the management and administration of areas of particular sensitivity and friction, especially policing and law enforcement, access to the Old City and the Holy Sites, protection of the Holy Sites and worshipers, along with heritage protection and archaeological oversight. Its mandate would also include a regulatory role over planning, zoning and construction permits, protection of property rights, environmental and safety issues in the Old City as well as infrastructure. The Special Regime would have a basic legal system including dispute resolution mechanisms to resolve disputes arising out of issues related to these responsibilities. Agreed norms of international law would act as a foundation for this governance system.

2. **Geographic Scope:** The Special Regime is designed specifically to meet the challenges of the Old City. Limiting the application of the Special Regime to the Old City has significant practical advantages, including defined boundaries and a clear capacity to control exit and entry into the area. If the two sides agreed, 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 City of David/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 a clear role and clear authorities for the Special Regime in this larger area, and the likely conflicts that would arise between the Special Regime authorities and the sovereign governments. The many Holy Sites around the Old City can be managed through other creative options, including the application of World Heritage Site regulations, similar to those applied inside the walled city today.
3. **Duration:** The envisioned Special Regime mandate would be in force for a minimum of 15 years and continue thereafter, pending agreement by the parties to an alternative. International support for these arrangements is essential, given the global importance of the Holy Sites and the distrust between the sides.

1.3 – Transitioning from Status Quo to Special Regime

The transition from existing arrangements in the Old City to the proposed Special Regime would pose considerable challenges, requiring careful planning and preparation. The actual transfer would have to occur in phases. Such an approach would prepare the ground for the Special Regime, while establishing confidence, on both sides, in its efficacy and purpose. The transition process, and in particular the new security arrangements, need to move swiftly and many of the steps suggested below must proceed simultaneously

- Agreement of the governments of Israel and Palestine to establish a Special Regime for the Old City of Jerusalem. This phase would involve the negotiation and ratification of the terms and mandate as part of the final status agreement, or, as a stand-alone agreement preceding final status. Such negotiation would have to include recognition of the fact that conditions of parity do not currently exist between the sides.
- Creation of the laws, rules and guidelines for the Special Regime and putting into place the key initial elements of the Regime. This phase would involve the establishment by the parties of the initial bodies of the Special Regime (i.e., the Executive Board and the Chief Administrator, as described in detail in Chapter 7, below), and initial mobilization of international political and financial support and, as appropriate, participation in the Special Regime. It would also involve the establishment of transitional commissions to identify options, standards and regulations for the management of complex issues.
- Establishment of the Special Regime's infrastructure. This phase would involve putting into place the necessary operational and bureaucratic infrastructure to carry out the mandate and functions of the Special Regime, including the establishment and activation of the Old City police force as described in Section III.3.1 below;

- Establishment of a coordinated process of transition from Israeli control to Special Regime control, especially regarding security and access.
- Establishment of dispute-resolution and coordination mechanisms for the Holy Sites, including establishment of close coordination with the Religious Council.
- Establishment of critical institutions including a Consultative Council and coordination with a Religious Advisory Council.
- Review of the recommendations of the Transitional Commissions regarding a legal system and rules for heritage and archeology as well as property regulation management. Dispute resolution mechanism launched and Special Regime institutions begin to apply and administer the recommendations.
- Consultations with Old City Community leaders, business institutions, informal dispute resolution elders regarding preferred methods of consultation with the SR. Formalisation of coordination and liaison mechanism with the municipalities.

A more detailed outline of implementation phasing may be found in Annex B.

1.4 – Guiding Principles of the Special Regime

Functions and activities within the Old City would be divided into two categories. The relation of the Special Regime to each function depends governs and is governed by this categorization. The functions and activities are:

i) Place Functions that Fall Under the Authority of the Special Regime:

This category includes, for example, all functions related to Holy Sites, Heritage and Archeology issues and security. Because of their highly contentious nature and their inter-linkage, these functions must be under the direct control and authority of the Special Regime, and the successful oversight and management of these functions is the core mission of the Special Regime. Beyond this there are other functions, which due to their location based connection to the Old City and their conflict generation potential, require Special Regime authority. These would include issues such as property ownership, environmental management, and local infrastructure and services – areas that will likely remain matters of political contention between the parties and whose management impacts on peace and security within Old City. In many of these cases, there will need to be various degrees of reference to and coordination with national or municipal bodies.

ii) People Functions that Fall Under the Authority of the National Governments:

This category includes principally functions that are grounded not in the Old City itself, but in the people who inhabit, work in or visit it. Under the proposed Special Regime, residents of the Old City like citizens of Yerushalayim (Israel) and al Quds (Palestine), will be citizens of either Israel or Palestine, and would exercise their political and social rights and duties in the context of their own states and national

capitals. Aspects of their lives that are not included in the above categories would fall under the authority the national governments and thus be governed by the laws and regulations of their respective states. Such functions would include education, family matters, health, social programs and religious practice. No Special Regime role in these matters is envisioned or desirable.

1.5 – Security

1. **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. Any security system must ensure that the Old City will not become a base of operations or incitement against the parties or the peace agreement nor a haven for criminal activity.
2. **Security as the test for any peace agreement:** Moreover, there is a broader context within which a security system must be seen: A comprehensive peace agreement between Israel and Palestine would almost certainly be a “package deal” in which the parties would make compromises and agree to tradeoffs among core issues, including the Old City. Under any peace agreement, if security in the Old City were to break down, then other parts of the agreement, and the agreement itself, would be endangered. There is also the possibility that a third party security role in Palestinian areas or between Israel and Palestine will be part of an agreement. An Old City security system would have to coordinate closely with such a system.

The following sections present a more detailed discussion regarding the envisioned functions of the Special Regime. Ancillary proposals are found in annexes, as indicated.

Part II – Governance Structure of the Special Regime

2.1 – Overview of the Governance Structure

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

- a. **The Executive Board:** A Special Regime Executive Board consisting of senior representatives of the Israeli and Palestinian governments and, possibly, select other countries agreed to by the parties, would be established. The principal function of this board would be the appointment of the Special Regime’s Chief Administrator.
- b. **The Chief Administrator:** Executive authority over the Special Regime would be vested in a Chief Administrator, an experienced and internationally-respected individual appointed by and accountable to the Executive Board. He/She would have overall and ultimate responsibility for policing/security and specified public administration and governance functions. Chief Administrator should not be a citizen of either Israel or Palestine and would be appointed for a fixed, renewable term.
- c. **Inter-Authority Liaisons:** Close consultation and cooperation between the Special Regime and national (Israel, Palestine) and municipal (Yerushalayim, al Quds) officials will be a fundamental requirement for the successful operation of the Special Regime and to permit rapid access and consultation in case of crisis. Liaison offices should be established for this purpose.
- d. **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 police service would be headed by a police chief to whom all on the force would be accountable. In turn, the police chief would be accountable to the Chief Administrator who would appoint the chief with the concurrence of the parties. To ensure stability, the police service’s mandate would include the maintenance of public order, counter-terrorism, entry and exit control to and from the Old City, the enforcement of civil and criminal laws, security and intelligence responsibilities and community policing. The police service would liaise closely with Palestinian and Israeli security services. A specialized Holy Sites police unit would be created to deal with issues related to the Holy Sites. The Old City would be a “weapons-free” zone except for designated members of the Old City Police Service.
- e. **Old City legal and dispute resolution systems:** The Special Regime would include a basic, independent legal system and dispute resolution mechanism for specified issues of adjudication and resolution.
- f. **Transitional Commissions:** At the outset the Chief Administrator would establish a number of specialized transitional commissions to review the more complex issues in the Old City and to create agreed frameworks for their management by the Special Regime.
- g. **Supporting Councils and Bodies:** The Chief Administrator would also work closely with existing and new local and international councils and bodies, representing the various local and international stakeholders.

2.2 – The Executive Board

1. **Definition:** An Executive Board for the Special Regime would be established jointly by the Israeli and Palestinian governments, either through a stand-alone agreement or through a decision embedded in or appended to a peace treaty. The Board's primary purpose would be to appoint the Chief Administrator and be his or her formal point of contact with the parties. Each party would designate a senior official or officials as their representative.
2. **Composition:** The question of membership should be decided by the parties in their treaty negotiations in order to avoid possible disagreement during implementation. Membership could be reserved for equal numbers of representatives of the Palestinian and Israeli governments exclusively, or membership could be extended to a small number of additional countries and/or institutions acceptable to both parties and chosen by them.
 - a) Inclusion of outside members could help bridge differences and resolve issues between the parties, as distrust between the Israeli and Palestinian members may be considerable and each may be under significant political pressure from their own governments and various domestic constituencies. In addition, international membership could underpin the international legitimacy of the Special Regime and enhance the Parties' ability to raise funds and recruit personnel for its operations.
 - b) Alternatively, inclusion of outside members could dilute the responsibility and commitment of the parties to work together to solve issues. It could also lead to blurred lines of responsibility, suggesting that the Administrator is accountable to these third parties as well as Israel and Palestine, which in turn could undermine sustainability.
3. **Functions:** The primary purpose of the Executive Board would be to provide Israel and Palestine with a mechanism to recruit and appoint the Chief Administrator and to be the authority to which the Chief Administrator would be accountable. In addition, the Board's role should include ratification of the Chief Administrator's nominee for Police Chief and recruitment and appointment of a Chief justice to oversee the legal system. During the start-up phase the Executive Board would be consulted regarding the structure, resourcing and establishment of Special Regime institutions, the mandating of the Transitional Commissions, the review and confirmation of the Commissions' recommendations, and establishment of the legal framework including guidelines for heritage, archaeology, and conservation, along with property ownership and registration. Once the Special Regime was in place the Executive Board would review and approve the annual operation budget, review the Chief Administrator's annual reports on the status of the Special Regime's operation and take the lead role in fund raising to support the Special Regime's operations.

2.3 – The Chief Administrator

1. **Definition:** The model we are proposing for a Special Regime calls for the recruitment and appointment of an internationally respected individual as Chief Administrator of the Old City Special Regime. The Chief Administrator would be

appointed for a fixed, renewable term of 5 years.

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 react effectively and rapidly to ensure the security and stability of the Old City, for its inhabitants, and for its visitors. Such authority is vital to managing issues related to the Holy Sites in the Old City, as well as to issues and disputes that may arise regarding archaeology, property rights, and other matters prescribed within the mandate. **It is critical that the Administrator be empowered to act quickly and decisively in the face of threats to public safety, holy and heritage sites, and to the peace treaty as it applies to the Old City.** Without real executive authority vested in the Chief Administrator, relatively small problems have the potential to become major crises with significant consequences both for the Old City and Israeli-Palestinian relations.
3. **Reporting Relationship:** The Chief Administrator would report to the Executive Board annually, and would consult with the Executive Board on key decisions and appointments, as described above. The Chief Administrator would be required to meet with the Executive Board quarterly and the accountability framework of the Administrator would include the requirement to prepare and submit an annual report including an annual outside audit.
4. **Personal Qualities:** To satisfy the requirements for transparency, accountability and sustainability in this new governance arrangement, it is important that the Chief Administrator establish legitimacy by demonstrating exemplary values and ethics, respect for diversity, the absence of any conflicts of interest (real or perceived), strong management and communications skills, and financial prudence. These criteria should be applied in the recruitment of the Chief Administrator by the Executive Board. Given the small size of the Old City, the Chief Administrators capacity to establish cordial, even personal, relationships with the residents is critical and this could be enhanced by residing within the Old City itself.

2.4 – The Liaison Function and Consultative Bodies

1. **Rationale:** The Chief Administrator must work in close consultation with Israeli and Palestinian national authorities and with authorities from the Yerushalayim and Al Quds municipalities. Certain issues, like management of Old City holy sites, will fall wholly under the authority of the Special Regime. Other functions, like provision of health and education services to inhabitants of the Old City, will fall wholly under national/municipal authorities. Thus, constant and close consultation between the Special Regime and national/municipal authorities is a central requirement for the success of the regime.
2. **Liaison Offices:** We suggest that each of the Parties appoint liaison offices with required staff, to act as a link between the Chief Administrator and the national governments. This would permit the Chief Administrator to have rapid access and consultation with national authorities in case of crisis as well as in the normal course of events. Similar liaison will be required with the municipalities over matters of zoning, planning, property and infrastructure, although these functions most often are likely to take place on the working level.

3. **Neighborhood Councils**: There will also be the requirement for consultations between the Chief Administrator and Old City residents. We suggest the development of neighborhood councils for this purpose. (*This section being developed*).
4. **Consultative Council**: A Consultative Council composed of the Chief Administrator, his senior policy and legal advisors, and representatives of the advisory religious council (described below) and the Old City communities would constitute a useful link with the Old City's communities. It would be a forum for consultations, crisis management and problem solving. The Chief Administrator would have the authority to convene this Council as necessary, not less than monthly, to review matters.
5. **Additional Mechanisms**: Other formal and informal mechanisms for engagement could be developed as experience is gained on the ground.

2.5 – Legal System

1. **National Laws and the Old City Legal Regime**: Israeli or Palestinian law would apply in the Old City to each resident or visitor, according to nationality (i.e., the law is carried with the individual), except for those matters that are under the jurisdiction of the Special Regime (as discussed in Chapters 8-10, below). This approach is aimed to avoid the unnecessary creation of a separate, comprehensive legal regime for the Old City. An individual Palestinian or Israeli charged with a crime would be tried in his/her country of origin. The exception would be crimes involving two nationalities. In this case, we suggest a tribunal composed of one jurist each appointed by Israel and Palestine and one jurist chosen by the two appointees will decide on jurisdiction in cases in which the accused and the victim of a crime are of different nationalities, or in which a foreign visitor appeals to the tribunal for a decision on jurisdiction.

The tribunal will have no power to decide jurisdiction in cases where the accused and victim of a crime are of the same Palestinian or Israeli nationality. The decisions of the tribunal shall be final, and there will be no appeal of its decisions. Procedures will be established for the Old City Police to transfer custody of prisoners to Israel or Palestine within a fixed period of time after jurisdiction is established.

2. **Third-Country Nationals**: For foreigners who commit crimes in the Old City, the law of the "gate of entry" would apply, regardless of the nationality of the victim. A third-country national who entered the Old City via Palestine and committed a crime would be under the jurisdiction of Palestinian law. A third-country national who entered the Old City via Israel and subsequently committed a crime would be under the jurisdiction of Israeli law.
3. **Crimes against the Old City**: Certain crimes related to the most sensitive areas of friction within the Old City –, like the Holy Sites, archaeology or property, or cross-ethnic crimes that threaten public order – would fall under the jurisdiction of the Regime. There would need to be an agreed-on list of such crimes, and the appropriate special legal mechanisms to deal with them (discussed further in Sec. 2.6, below). In addition, it would fall under the jurisdiction of the Special Regime whether to permit entry into the Old City of any person deemed a threat to security or public order, based on past criminal infractions in the Old City.

4. **Transitional Commission on Law Reform:** Established by the Chief Administrator and the Executive Board, a Law Reform Commission would make recommendations as to the laws and regulations and dispute resolution mechanisms that should be established under a Special Regime. The Commission would be comprised of international, Israeli and Palestinian legal experts, judges, lawyers, and jurists and would examine legal issues in order of priority for the establishment of law, order, and equity in the Old City. (See Annex B for suggestions on the Law Reform Commission)
5. **Transition to an Old City Legal Regime:** In order to maintain continuity, the law in force at the time of the Special Regime's coming into being would remain in place pending completion of the work of a law reform commission and the adoption by the Executive Board of its recommendations. Some aspects of current law that seriously prejudice the rights of one community over another would have to be annulled immediately.
6. **Regulatory Regime:** In addition, because of their impact on public safety and security the Special Regime will have to exercise regulatory control over functions that impact the public sphere inside the Old City, including: business licensing, public health and safety matters, municipal infrastructure (water, sewage), fire services, and environment (pollution, recycling).
7. **Civil Contracts:** As of the date of the start of the Special Regime, all civil contracts would have to specify the jurisdiction responsible; all existing contracts would fall under the national law in force at the time the contract was entered into.

2.6. – Courts and other Dispute Resolution Mechanisms

1. **Civil Arbitration:** An arbitration system should be established by the Administrator for private legal matters involving sums in excess of a specified sum. The process could involve a board of three arbitrators with each side choosing one and the two then choosing a third. All torts could go to arbitration under an Old City Special Regime arbitration system or by private arbitration arrangement between the parties. Misdemeanors in the Old City could be resolved by local justices of the peace employed by the Special Regime.
2. **Dispute Resolution Mechanisms and the Legal System:** *(Further work is underway.)* There will be a need for special tribunals under the authority of the Special Regime. The following instruments are recommended:
 - a) Special Court for Property Disputes: As this category is likely to be the most difficult and complex legal issue to be dealt with, other than Holy Sites, a special court customized to deal with property disputes may be required.
 - b) Special Regime Court for minor offences: To deal with issues related to licensing, services and minor infractions.
 - c) Dispute Resolution Mechanism OR an appeals Court.

3. **Commission on the Holy Sites**: It is likely that a special body, directly linked to the Special Regime will be required to deal with any contentions or disputes related to the Holy Sites. *(Work to develop this concept further is underway)*

Part III – Functions of the Special Regime

3.1 Security

1. **The JOCI Security Assessment**: Over the past two years, the Jerusalem Old City Initiative security team, working with Palestinian and Israeli experts has developed concepts, ideas and detailed proposals for a comprehensive Old City security system which should be read in conjunction with this report. The security arrangements described in that Assessment are designed to ensure freedom of worship, dignity, access and equity. While no security arrangements can absolutely guarantee inviolability, a sound system for the Old City is possible with the close coordination and commitment of Israeli and Palestinian authorities. The Security Assessment can be seen on the Initiative's web site: www.uwindsor.ca/jerusaleminitiative.
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 would be headed by a Chief of Police appointed by the Chief Administrator, with agreement of the Executive Board. The authority of the Police Service should be rooted in the mandate the parties entrust to the Administrator. Under this arrangement, the Old City would be a weapons-free zone, except for the armed elements of the Police.
 - b) **Resources**: An effective and respected Police Service would require significant resources, both financial and personnel, from the international community. See Security Assessment for more details.
 - c) **Composition**: The Service should initially include only international officers, given the lack of trust that exists between the parties. However, officers seconded from Palestine and Israel, serving as unarmed Community Liaison Officers, could perform valuable services. Later on, as trust develops, regular officers could be recruited from the Party states. (See Annex E for detail regarding Community Liaison)
 - d) **Area of Operations**: The Police Service's area of operations would be the area within the confines of the Old City's walls, with two exceptions. First, the police would need to operate in Old City entry/exit facilities, bearing in mind that, due to space limitations at the Old City gates, some entry/exit facilities would be at least partially outside the walls. In cooperation with Israeli and Palestinian authorities, the Police Service would control/monitor all access to the Old City. The degree of control would depend on the current threat assessment and aimed to be minimally intrusive. Second, there would need to be periodic police inspections of the walls' exteriors.

- e) **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 Chief Administrator. Neighborhood policing would be a major function, with neighborhood partnerships an important element.
- f) **Special Responsibilities:** The Police Service would have particular responsibility for the protection of the Holy Sites and for ensuring the access and 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 (described in Sec. 3.3), to establish appropriate measures to guarantee access while maintaining public safety and order, and to define the conditions under which armed units would have the authority to enter Holy Sites. The security of the Holy Sites begins at the gates to the Old City and the police service's role in monitoring and controlling access at the gates needs to be understood in that context. 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' would also be required, maintaining close relations with the religious authorities at key sites, and the Advisory Religious Council. Careful consideration should be given to the composition of this unit and special training given to its members. In addition the police service would need a standing public order rapid deployment unit to deal directly and quickly with disturbances and threats to the Holy Sites and worshipers.
- g) **Criminal Operations Unit:** The Service would also need a Criminal Operations Unit, including a strong intelligence operation. This unit would need to work closely with Israeli and Palestinian police and intelligence services, including the participation of officers seconded to the unit. It would maintain ties with the relevant agencies of other countries and with Interpol, and would have its own training, logistics and administration capabilities. The Service would also have capabilities for responding on short notice to difficult events, with forces both from within the Service itself and from outside, based on prior arrangements.
- h) **Residency in the Old City:** For reasons of security, there may be the need to create special residency cards for Old City residents which, under specific situations, would have to be verified by the Old City Police Service, especially at points of access to the Old City.

3.2 – Holy Sites

1. **The Problem of Defining Holy Sites:** A key to the Special Regime's success will be its ability to protect, preserve and maintain the Holy Sites in the Old City, manage heritage preservation and archeological activity and provide security for visitors and residents. An important criterion in these activities is for the Special Regime to adhere to a definition of Holy Sites which is clear but flexible. Our commissioned reports have confirmed previous research demonstrating that simply defining what is a holy site is contentious. Many sites in the Old City are defined as "holy" by one community, but not recognized as such by others or by the 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 between 225 to more than 300.

2. **Taking a Functional Approach:** We therefore suggest that functional criteria be applied to this exercise. We recommend that, for the Special Regime, holy sites should be viewed primarily as security and heritage/archeological issues. 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. Sites which are contested or most frequented will be the sites of particular concern to the Special Regime; less contested or frequented sites will likely require less focus.
3. **Responsibilities of the Special Regime:** Challenges to meeting the Special Regime's mandate with respect to Holy Sites include:
 - a) **Ensuring respect for the sanctity of the sites:** Ensuring that the sanctity of all sites deemed holy by particular faiths is respected. This includes ensuring that any excavation, maintenance, conservation or repairs undertaken in or adjacent to these sites is carried out after consultation with the various parties and in accordance with international benchmarks. It also means managing through careful coordination and careful exercise of authority activities or forms of worship of one community that may be perceived by another community as impinging on the sanctity of the site or the rights of other worshippers.
 - b) **Protecting access to the sites:** Ensuring that access routes are open to worshippers and visitors, and that these worshippers and visitors do not face intimidation or harassment. In addition this entails establishing effective mechanisms to accommodate rituals and pilgrimages and processions to and from the sites on particular festival days.
 - c) **Preserving the existing status quo:** Ensuring respect for the current *status quo* in terms of control over and operations of Holy Sites. This status quo is based on Ottoman law, with later changes made under the League of Nations Mandate, along with customary practice and the current *modus operandi* as it has that evolved since 1967 regarding Holy Sites.
 - d) **Building tolerance and trust:** Working to pre-empt trends in intolerance and radicalization through fostering a culture of tolerance and respect for the three faiths and the development of the Holy Sites of the Old City as inspirational symbols of faith, spiritual growth and religious harmony.
4. **The Special Regime's Relationship with Religious Communities:** In exercising executive authority over the Holy Sites, the Chief Administrator should liaise actively with a range of with religious and secular authorities. Supporting the Chief Administrator in delivering these core mandate functions will be the Old City Police Service (including a specialized Holy Sites Unit) along with a Religious Affairs department and a Heritage and Archaeology department integral to the Special Regime. These departments will be responsible for liaison with:

- a) The relevant ministries in the Palestinian and Israeli governments and municipalities on all matters that are of national or municipal relevance,
 - b) The Advisory Religious Council
 - c) The Old City's religious communities
 - d) International religious and cultural heritage organizations.
5. **Management and Security of Holy Sites and Heritage:** The model proposed for management and security of the Holy Sites in the Old City has five components consisting of:
- a) **The existing custodians of the site.** Holy Sites would remain under the authority of their existing custodians, and the internal management of Holy Sites should remain the exclusive province of those custodians and the communities they represent and serve.
 - b) **Relevant department or departments within the Special Regime.** It would be the responsibility of the Chief Administrator to ensure respect for the sanctity of the Holy Sites and access to them, to the satisfaction of the religious communities (subject to the requirements of public order). The relevant department or departments within the Special Regime, in particular the Religious Affairs department and the Heritage and Archeology department, would be the primary instruments through which the Chief Administrator would liaise with the Advisory Religious Council to monitor whether this responsibility is being met. The Religious Affairs Department would work directly with the appropriate religious institutions and be the point of contact for the Advisory Religious Council. In addition, the Religious Affairs department would liaise with counterpart organizations in the Israeli and Palestinian governments as appropriate.
 - c) **The Old City Police Service.** As discussed in Section 3.2, the Police Service would be responsible for day-to-day protection 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.
 - d) **Specialized working groups to deal with specific particular issues.** Our research has identified four areas where enhanced coordination on Holy Sites and religious activity would be desirable. This includes the creation of working groups or standing committees to coordinate and exchange information on religious activities, to improve the esthetics of the Old City and promote tolerance and respect, to co-ordinate heritage maintenance and archeological activity and to attempt to resolve disputes between religious communities through informal means. See Annex F for suggestions regarding the specialized Working Groups.
 - e) **The independent Advisory Religious Council.** The religious communities and their leaderships in the Old City have a legitimate interest and concern in how a Holy Sites management and security framework is established and executed. The newly created Council of Religious Institutions of the Holy Land (or some other new, independent inter-religious body) could play an important role in the success of any effort to shape and implement such a framework. However, to avoid politicization of every issue or decision, and to avoid deadlock, decision-making authority should rest with the Special Regime, rather than with religious

authorities or a religious council. The Administrator and the relevant departments of the Special Regime would inform and consult with the Advisory Council on all matters pertaining to the religious affairs in the Old City, including special planning related to holidays and festivals. The Council could also participate in training for the Holy Sites police unit and in an advisory capacity to the Police force. In addition, the Council could liaise with international religious and cultural heritage organizations over the development of the Old City as a place for spiritual growth and religious harmony. Finally, it could participate in the Chief Administrator's Consultative Council (as described in Section 2.4.4, above).

The Council of Religious Institutions: Since 2007, a Council of Religious Institutions of the Holy Land has been in existence comprising two leading members of each faith – Judaism, Christianity and Islam. A recent communiqué (November 2007) declared that:

“Our respective Holy Places have become a major element in our conflict. We lament that this is the case, as our respective attachments to our holy places should not be a cause of bloodshed, let alone site of violence or other expressions of hatred. Holy places must remain dedicated to prayer and worship only...”

With particular reference to Jerusalem the Council stated that they are working to:

“Reflect on the future of Jerusalem, support the designation of the Old City of Jerusalem as a World Heritage Site, work to secure open access to the Old City for all communities, and seek a common vision for this city which all of us regard as holy”.

3.3 – Heritage and Archeology

1. **Context:** 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, and such situations can rapidly deteriorate into conflict.
2. **Responsibilities of the Special Regime:**
 - a) **Managing Archeology:** To manage points of friction, the Chief Administrator will need a professional Heritage and Archaeology Department. Working with a Heritage and Archaeology Commission, staffed by Palestinian, Israeli and international archaeological and heritage professionals, this 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 heritage and archaeology projects meet UNESCO standards. The Department would develop institutional relationships with Israeli and Palestinian professional and academic institutions and with UNESCO and other relevant international bodies.
 - b) **Preserving the Old City and its treasures:** In recent years there have been controversies resulting from damage to various ancient structures as a result of climatic, environmental or 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 of the Old City will take on a new importance. 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 designed to detect and address maintenance, conservation and safety problems and to identify sources of expertise and appropriate technical assistance. The Old City administration would also undertake to ensure that UNESCO would be consulted and involved where appropriate and that any material alteration at or adjacent to Holy Sites conform to international norms.

3.4 – Planning, Property and Infrastructure

A. Planning and Zoning

- a) **The current situation:** Our research suggests that the complex political struggle for control over the Old City, unequal and discriminatory application of laws and regulations and chronic over crowding, especially in the Muslim quarter, have resulted in ad hoc and extra-legal construction, degradation of ancient buildings, structures, and over-taxing despite inadequate infrastructure, not to mention destructive pressures on families and communities. It is difficult, if not impossible, to provide definitive evidence of ownership. Many holdings over 200 years old have neither title nor deed and are inherited without documentation. Other property is divided among various parties informally. All this has significant implications for property ownership, zoning, planning, public health and taxation.
- b) **The responsibilities of the Special Regime:** The Special Regime will need to create and implement a comprehensive development and conservation plan for the Old City that balances between, on the one hand, meeting residents' needs and improving their living conditions, and on the other hand, maintaining an appropriate commercial environment, preserving heritage, and accommodating pilgrims, tourists and other visitors.
- c) **The Old City Planning and Zoning Department:** To accomplish this, the Chief Administrator would need a highly professional, multi-disciplined planning and zoning department, bringing together qualified international, Israeli and Palestinian city planning experts under an international chief planner. The planning process would require substantive consultations with the relevant units of the adjacent municipalities, with the inhabitants, major property owning institutions, including the religious institutions and communities, and the business community. It would also need to create institutional linkages with UNESCO and the International Council on Monuments and Sites to ensure that the international standards applicable to World Heritage Sites were applied.
- d) **Mandate of the Special Regime's Planning and Zoning Department:** This Department would assume responsibility for the issuance of building permits and the enforcement of zoning, heritage, and construction and safety standards. It would take the lead in creating an urban development plan for the Old City, in coordination with planning and development programs of the Municipality of Jerusalem, or Al Quds and Yerushalayim.

B. Land and Property Registry

- a) **The Current Situation:** The Old City has no land and property registry recognized by all sides. The majority of buildings have neither title nor deeds. In many instances, this has not prevented normal patterns of property purchase or

rental emerging, or the resolution of disputes and claims in the courts. However, there are cases of claims that derive from or affect the national conflict, which would have to be addressed directly by the Special Regime.

- b) **The Role of the Special Regime:** It is uncertain whether it is beneficial, or even possible, to develop a land and property registry for the Old City. The nature of the treatment of property disputes will be a matter of specific and immediate attention for the Special Regime and the Chief Administrator. *(To be amplified through further study.)*

C. Utilities and Infrastructure

- a) **The Current Situation:** The provision of services and maintenance of basic infrastructure within the Old City is uneven and inconsistent. Services and infrastructure maintenance 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 Jerusalem Municipality, as compared to the rest of the Old City.
- b) **Services provided by the Municipality:** The Municipality of Jerusalem is responsible for sanitation, including street cleaning and trash removal, 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 results in considerable leakage and unknown damage to the ancient layers below the streets. Equitable 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, is in need of serious renovation. The rainwater drainage system covers only parts of the Old City and the resultant run off is a problem for structures within the Old City and the surrounding neighborhoods. 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.
- c) **Services provided by the private sector:** The Jerusalem Municipality plays no role in the provision of electricity in the Old City. Rather, electricity is provided by two private companies: JEDCO, which services the Muslim, Christian and Armenian quarters, and IEC, which services the Jewish Quarter. JEDCO's infrastructure is said to be in serious need of upgrading and the number of transformers is inadequate. The public lighting system is inadequate. Telephone, television, and internet service in the Old City is provided by the Israeli firm Bezeq.
- d) **The responsibilities of the Special Regime:** The Chief Administrator should establish a Utilities Department, responsible for issuing contracts or licenses, as appropriate, to providers of services to the Old City. This would include contracts for street cleaning and trash removal, electricity, telephone and media services. In addition, the Department should be responsible for ensuring that contractors and licensees meet their obligations through monitoring, inspections and public consultations. The Department would also need to have the authority to sanction service providers who fail to meet agreed standards or contractual commitments.

- e) **Sharing Responsibility for Infrastructure:** Key Old City infrastructure, including roads and water, sewage and rainwater drainage systems, will require considerable upgrading and constant 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 take this on over the long term and should have the authority to float bonds to finance infrastructural improvements. The Executive Board and the Administrator should both be involved in an international drive to fund such infrastructure. This however would need to be done in cooperation with the municipalities of Al Quds and Yerushalayim, as well as the national governments. A special fund, involving all these parties, could be a response to this complex yet crucial issue.

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Part IV: Finance and Economics

- A. Finance:** A model must be developed which recognizes the Special Regime will never have sufficient resources to fulfill its mandate through the Old City's own resources, even the Special Regime will have some fund raising capacity through taxation, fees and bonds. Good governance will require substantial support from Israel and Palestine, as well as the international community, as there must be harmony between resources and mandate.

Requirements could be substantial. Support from the community of nations is all the more imperative, given the Old City's meaning and symbolism world wide and the threat to the Israeli-Palestinian treaty that would ensue were the Regime to fail in discharging its very complex and demanding mandate. In the wake of an agreement by Palestine and Israel to create the Special Regime, the two governments should organize a donors group.

- B. Economics:** General estimates indicate that if our suggestions for engaging the international community were adopted, more than 9,000 jobs would be created in the Jerusalem conurbation as the result of increased international involvement and a stable environment in Jerusalem. Approximately two thirds of these jobs would 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% increase in employment for the conurbation. New jobs as a result of construction have not been factored into these estimates; as such a boom could be less predictable in duration.

Details respecting anticipated growth can be found in annex (pages 39-41 of the Discussion Document.)

Annexes

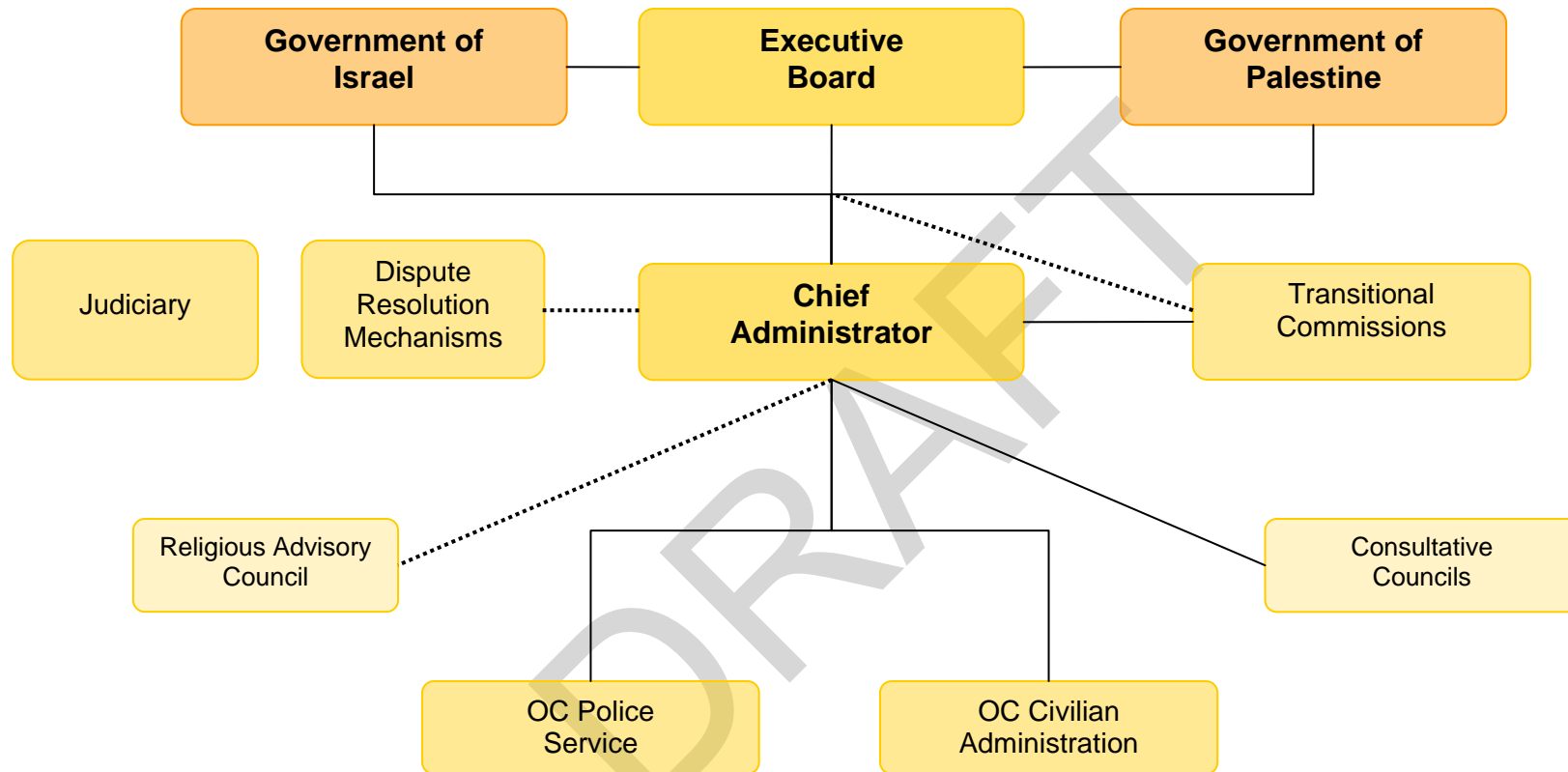
Annex A. Charts of the Jerusalem Old City Special

Chart 1 Jerusalem Old City Special Regime –Overview

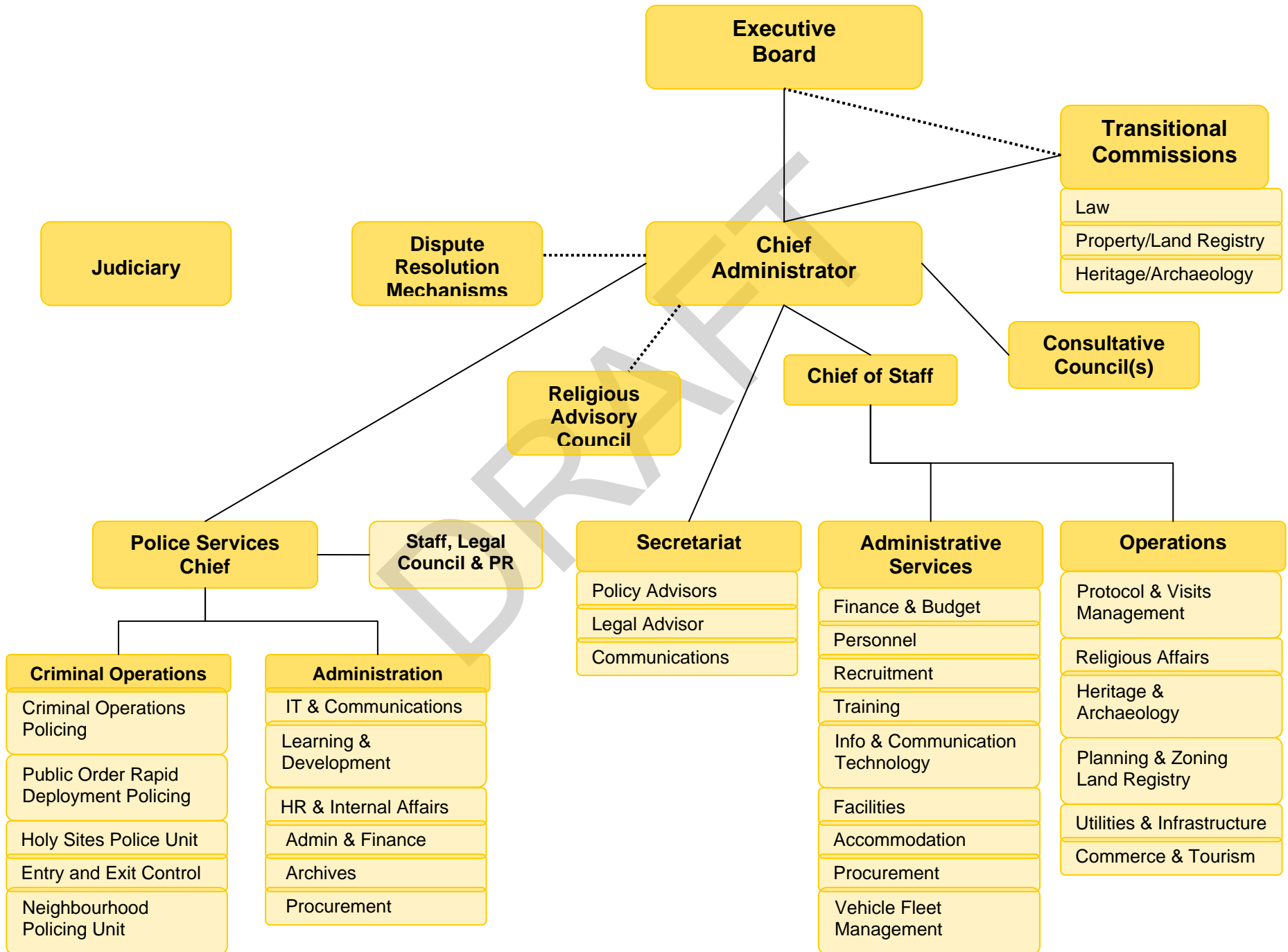
Chart 2 Jerusalem Old City Special Regime –Detail

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**Chart 1: Jerusalem Old City Special Regime
Overview**



**Chart 2: Jerusalem Old City Special Regime
Detail**



ANNEX B. Transitioning To a Special Regime for the Old City of Jerusalem

A. The transition from existing arrangements in the Old City to the proposed Special Regime would pose considerable challenges, requiring careful planning and preparation. The fact that that conditions of parity do not currently exist between the sides must be recognized and addressed and the planning and implementation will have to be adapted to the needs and capacities of each side and will probably require the engagement of international expertise, The actual transfer would have to occur over time and in phases, although political requirements suggest this need be done with maximum expedition. This would establish confidence in the Special Regimes efficacy, a *sine qua non* for its success.

B. Such an approach should involve the following elements:

1. The process of implementation of the Special Regime will be as critical to success as its design. A phased approach is a mechanism for building trust with the parties and ensuring the efficacy of proposed structures that should also permit adjustments and adaptations to be made as the process unfolds.

2. The steps below are suggested simply to stimulate thinking about how this unique institution could be put in place. At key steps, the Chief Administrator would consult with the Executive Board, as well as the parties (Israel and Palestine), to ensure agreement and receive their input before the next phase of implementation.

– **Agreement of the governments of Israel and Palestine to establish a Special Regime for the Old City of Jerusalem**

Israel and Palestine agree to create a special regime for the Old City of Jerusalem as part of a comprehensive peace agreement. Mandate for the Special Regime and its Chief Administrator are part of the Peace Treaty.

– **Establishment of foundation institutions and processes.**

International political support, financial support and participation (as appropriate) is mobilized to create the Special Regime. Pledging conference creates an Old City donors' group.

Creation of an Executive Board by Israel and Palestine (decisions on function, procedures membership and composition).

The Executive Board recruits and appoints a Chief Administrator.

Chief Administrator establishes teams to plan and design administrative structures, police service, links to municipal and national authorities and consultative mechanisms. Planning includes measures to compensate for difference in capacity.

– **Creating the laws, rules and guidelines for the Special Regime by establishment of Transitional Commissions to investigate options and create guidelines for managing complex issues.**

1. Law Reform Commission

2. Heritage and Archaeology Commission
3. Property Commission

Suggestions for the Transitional Commissions are found in Annex B.

– **Establishment of the SR's infrastructure**

Recruitment and Appointment of Police Chief and Chief Justice

Mapping of program and security needs

Set-up of Secretariat, Support Services and Operational Departments

Establishment of OC Police Service (see Security Assessment for details)

Deployment of first wave of seconded international police

Recruitment of long term international police and Community Liaison Officers

– **Establishing a coordinated process of transition from Israeli control to Special Regime control**

Police \Security transition group negotiate hand over time table, procedures, liaison, secondment and coordination guidelines

OC civil departments negotiate handover timetables, procedures, liaison and coordination guidelines with Israeli, Palestinian and municipal counterparts.

– **Critical Mechanisms set up**

Administrator's Consultative Council established

Coordination with Religious Advisory Council established

First Site with OCPS security established

– **Establishing and Applying the Rules**

Law Reform, Heritage and Archaeology, Property Commissions report to the Chief Administrator and Executive Board.

Recommendations debated, modified as necessary and adopted.

Legal system, Dispute Resolution Mechanisms launched

Special Regime institutions begin to apply and administer the recommendations.

– **Establishing Consultation and Liaison Channels**

Consultations with Old City Community leaders, business institutions, informal dispute resolution elders regarding preferred methods of consultation with the SR

Establishment of coordination and liaison mechanism with the municipalities

Annex C. Transitional Commissions

- 1) There are a number of issues of exceptional complexity and sensitivity within the Old City that will require special attention if the peace between Israelis and Palestinians is to be sustainable. We have identified three such issues (there may be more) and suggest that in each case a Commission, jointly established and mandated by the Governance Board and Chief Administrator bringing together international, Israeli and Palestinian expertise, be established to find solutions. The issues relate to 1) land and property ownership and the absence of a clear and accepted land/property registration system, 2) Heritage, Environment and Archaeological issues, procedures and standards and 3) the issue of what law will apply within the Old City under a two state solution and a special regime.
- 2) These issues are at the heart of the conflict over the Old City and we believe that they can best be managed by bringing together recognized Israeli and Palestinian subject matter experts with renowned international experts and giving them the mandate, time and resources to examine the existing situation, consult best international practices and recommend practices, processes, procedures and solutions, that will contribute to consolidating the peace. The work of the commissions will ensure that, in managing these complex and sensitive issues, the Chief Administrator is able to draw on a body of work that is, and is seen to be, the product of careful study and consultation involving leading experts from both sides and the communities and institutions concerned. It will take a number of years to put a special regime in place, and these commissions need to be mandated and put to work early in the establishment process.
- 3) The commissions will report to the Chief Administrator who will consult the Executive Board before implementing the recommendations

The Property and Land Registry Commission

- 1) The Old City is a small area (0.91 square kilometers), with a population exceeding 36,000 people. Property ownership issues are complex due to the area's great antiquity, the mixture of Ottoman, British Mandate, Jordanian and Israeli property systems, practices and laws that apply and the hard fact that at the core of the Israel-Palestinian conflict is the struggle for land.
- 2) In the Old City of Jerusalem, our research revealed that land ownership falls into four broad categories:

Owner	Area	% of the O.C.
Islamic Trust property	.2197 km ²	25%
Church property	.2724 km ²	31%
Private property	.2021 km ²	23%
State property	.1875 km ²	21%

- 3) Land use includes:

Usage	Area	Details
Residential	.45 km ²	5748 residential units

Religious	.28 km2	29 Mosques, 70 churches and convents, 22 Synagogues and yeshivas
Commercial	.08 km2	16 commercial areas
Archaeological sites	.05 km2	28 sites dating back 5000 years.
Unused space	.04 km2	

4) The spectrum of living space available to residents within the Old City runs is stark:

Quarter	% of total O.C area	Number of inhabitants	Persons per sq. dunnam
Islamic	51.1%	26,000	80.67
Christian	21.3%	5,300	27.6
Armenian	14%	2,150	17.06
Jewish	13.6%	2,350	19.26

- 5) There has never been an authoritative land registration system within the walls of the Old City. All of our research has stressed the sensitivity and complexity of the issue; all of our advisors have stressed the need for a registry despite the complexities and have recommended that one be established under the Special Regime. This will be a very sensitive issue among residents and trust will need to be established in order to gain their cooperation.
- 6) The Property and Land Commission would be tasked with conducting a survey of all properties within the Old City and determining to the extent possible within the time available, the use, ownership and/or occupancy status, establishing a set of criteria based on local practice and best international practices for resolving land and property ownership disputes, and will provide recommendations on the advisability and implications of creating a land registry system in which all future land transactions would have to be registered to be legally recognized. During the period while this work is going on all transfer of property will (be frozen but the Chief Administrator will have the authority to create a committee to examine and rule on exceptional cases until such time as a new land registry comes into effect.)

The Heritage and Archaeology Commission

- 1) The use of monumental buildings to signal political ownership and dominance has been a fact of Jerusalem's existence for millennia. In the Israeli-Palestinian struggle, both sides have made use of archaeology and ancient artifacts to buttress their claims to the territory. Both sides have accused the other at times of destroying or fabricating artifacts in the service of national agendas. The destruction of buildings of religious and heritage importance to one side by the other is a matter of historical record. Nowhere is such behavior more potentially explosive and damaging to long term peace prospects than in the Old City.
- 2) The designation of the Old City as a World Heritage Site by UNESCO signals that the city, its wall, buildings and the artifacts beneath have a global significance that transcends the Israeli-Palestinian national struggle. The interests of peace and of humanity in general are served best by having clear rules, high professional and ethical standards and effective control and monitoring in place to ensure that the past

is not used to destroy the future. It is also a fact that the Israeli and Palestinian archaeological professions have at times quietly cooperated on technical issues for the mutual benefit of “good science” and this cooperation needs to be expanded as a buttress to peace.

- 3) There is a body of standards to govern acceptable archaeological and heritage preservation practices emanating from UNESCO, ICOMSO and the archaeological and heritage preservation professions. In addition, successful measures undertaken over the past decade or so to, for example, deal with buckling of the walls supporting the Haram Ash-Sharif/Temple Mount platform have yielded a body of experience relevant to the particular characteristics of the Old City and its structures. In order to ensure that these challenges are dealt with in an agreed and transparent manner under the special regime an Old City Heritage and Archaeology Commission, drawing on Israeli, Palestinian, Jordanian and international experts (including, as appropriate, UNESCO and ICOMSO) needs to be established.
- 4) The task of this Commission will be to create and or consolidate an agreed on set of standards and practices for Heritage and Archaeology activities in the Old City to be supervised and enforced by the by the Chief Administrator and the Old City’s Heritage and Archaeology Department. The Commission will apply the Management Guidelines for World Heritage Sites under the World Heritage Convention and consult as needed with the World Heritage Committee. On the Archaeological side, the New Delhi Recommendations regarding Archaeological Excavations and the Venice Charter need to be taken into account. The recommendations of a University of Southern California sponsored Israeli-Palestinian Archaeology Working Group (<http://www.usc.edu/dept/LAS/religion/arc/sh/>) are worth reviewing in this regard.

The Commission will be tasked as well with taking due regard of relevant environmental challenges, standards and practices in formulating its recommendations. It will identify vulnerable areas and structures of particular concern for monitoring by the Special Regime and the relevant religious institutions and property owners. The commission will also create a set of guidelines for residents and property owners wishing to make modifications or repairs to existing heritage structures.

Law Reform Commission

- 1) Taking existing law as the point of departure and drawing on relevant international conventions and exemplary legislation from a variety of sources, the Law Reform Commission (LRC) would first identify as a priority laws that would require immediate modification in order for the special regime to commence operation and recommend the necessary amendments. Beginning with a comprehensive analysis of existing law, it would then propose these amendments to the Chief Administrator who will then consult the Executive Board.
- 2) One basic principle behind the establishment of a Special Regime legal system is to preserve as much with national and municipal (Al Quds and Yerushalayim) authorities as possible, thus permitting Old City residents to remain as “Israeli or Palestinian” as possible. Indeed, most of the legal and judicial needs for residents of

and visitors to the Old City will depend on their links and relationship to Al Quds and Yerushalayim, or to Israel or Palestine. For example, violations of ordinances of either capital regarding pollution, or laws regarding business licensing could well remain outside the Special Regime legal system.

- 3) In this process, several issues will have to be considered, including, the process for making and modifying laws for the SR, as necessary, the identification of crimes under the jurisdiction of the SR, the development of courts, conflict resolution and mediation machinery, and existing informal dispute resolution mechanisms.
- 4) Specific issues for the LRC review include:
 - Links between SR and Israeli and Palestinian criminal justice system for major offences
 - An Old City criminal code for minor offences.
 - Offences against Holy Sites, Heritage Sites, religious freedom and tolerance, and offences detrimental to the Old City's status as an arms free zone of peace.
 - Laws to regulate residency and access to the Old City,
 - Freedom of religion and access to the Holy sites, regulations relating to respect for Holy Sites and appropriate decorum,
 - Property to ownership, transfer and registration,
 - Zoning, planning and building permits,
 - Protection of heritage and holy sites,
 - Commerce,
 - Taxation (half of the property of the Old City is owned by religious and public institutions from which taxes are not collected – on the contrary they require subsidization)
 - Contracting, regulation/licensing of utilities and municipal services.
 - Dispute Resolution Mechanisms, including the role of informal mediation and arbitration that dominate certain quarters in the Old City.
- 5) Representative of the LRC would be seconded to the Property, Heritage and Residency Commissions to provide legal advice and analysis and to facilitate the transformation of those Commissions' recommendations into law or regulation for review by the LRC.

Annex D. Support Services for the Office of the Chief Administrator

1) Once appointed the CA would create a small secretariat to support his activities including:

- Chef de Cabinet,
- Political Advisor(s)
- Executive and Clerical support
- Communications (media relations),
- Legal Advisor
- Protocol/VIP Visits Management.

2) Administrative Services

A director of Administrative Services would be responsible to the Chief Administrator for the creation and ongoing management of a group of units to provide the Chief Administrator and the operational elements of the special regime with necessary administrative services. These would include-

3) Budget and Finance:

- Revenue, taxation and fund raising
- Budget and financial planning
- Financial operations
- Pay roll and allowances
- Audit and accounting.

4) Human Resources:

- Personnel policy and standards
- Recruitment, hiring and termination
- Training
- Personnel administration
- Assessment, monitoring, and discipline.

5) Physical Resources:

- Office and operational facilities
- Accommodation
- Supplies and equipment
- Information technology and communications infrastructure
- Vehicles and "fleet" management.

Annex E. The Old City Police Service

CHART

The Old City Police Service - Linkage with the Community

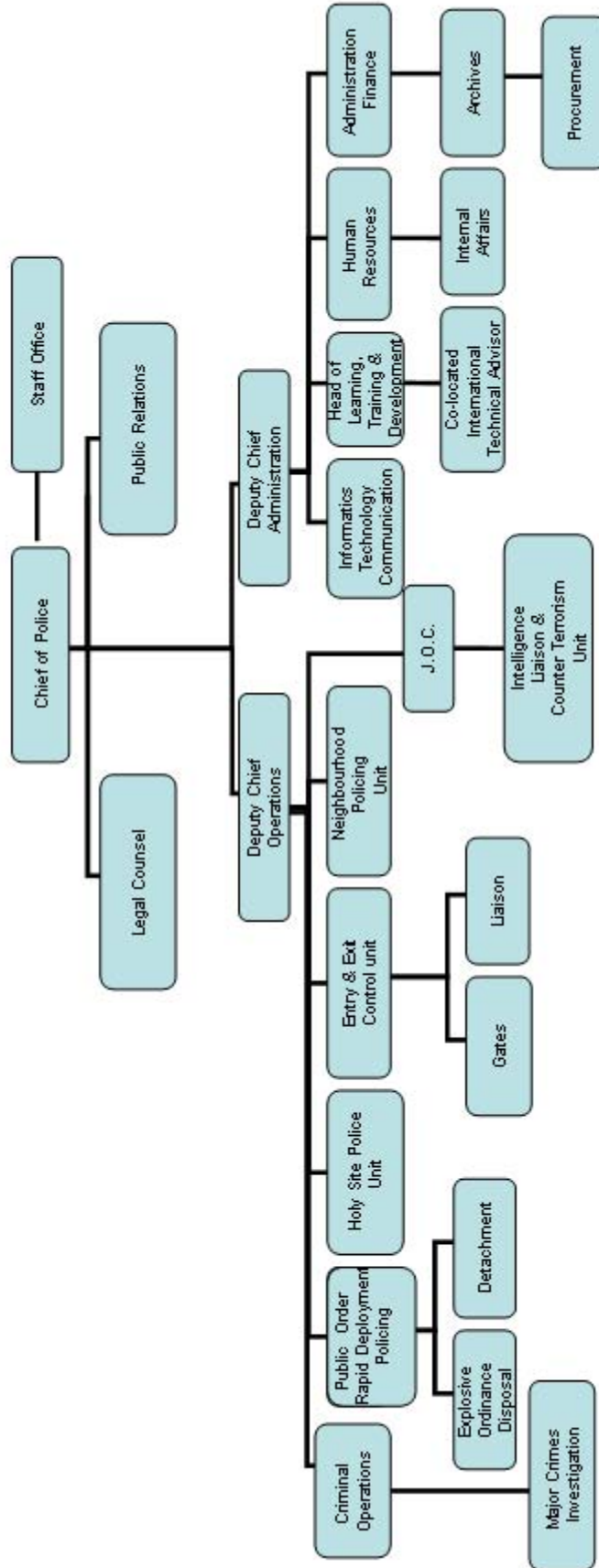
1. Beyond the issues outlined in the body of this document, the following are relevant aspects of the OCPS that would create greater legitimacy and effectiveness with the community:

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 Board in monitoring police service performance against public expectations and an annual policing plan.

There would be heavy emphasis on learning, training and development of the members of the police service. This is necessary to achieve policing professionalism and performance success in an exceptionally complex and sensitive environment. We advocate community-led, partnership policing with a fundamental commitment to protect and respect human rights.

The Community Liaison Officers mentioned above would be dedicated, unarmed policing teams recruited from Israel and Palestine responsible for assisting the international police officers in policing specific neighborhoods. The Liaison Officers would initiate active development of community partnerships at the police station and neighborhood level. This could include community meetings, conducting surveys of community needs and wants; lists of local contacts and partners e.g. neighborhood associations, business associations; service clubs; clergy. They would also be responsible for working partnerships with emergency response agencies i.e. fire, ambulance; hospitals; social workers; mental health professionals; victim services; private security firms; management agents of shops and businesses. Moreover, the neighborhood liaison officers would be responsible for co-ordination in identifying community priorities and action plan.

OLD CITY POLICE SERVICE



Annex F. Coordination of Holy Site and Religious Activity

Specialised Working Groups

The management of activity in and around Holy Sites as well as between religious institutions and communities could be enhanced through the creation of specialised *ad hoc* working groups to examine issues of particular importance. These could include:

- Religious Events Coordinating Working Group
- Spiritual Development Working Group
- Heritage and Archaeological Working Group
- Arbitration and Dispute Working Group

These working groups would be appointed by the OCA but would normally comprise OCA officials, competent residents and external professionals.

a) Religious Events Coordinating Working Group

This committee will comprise members of RAD, HSPU, the Religious Council, representatives of the religious authorities, representatives of the Israeli and Palestinian municipalities and tourism ministries. It will serve as a forum for the circulation of information, providing advice and coordination on:

- Religious Festivals
- Pilgrimage – flows, routes, specific requirements
- Rituals and ceremonies that will impinge on the adjacent area
- Access routes at times of high pressure
- Entry fees and composite tickets

The working group would seek technical assistance and advice where required.

b) Interfaith Relations Development Working Group

Echoing the lament of the communiqué of the Council of Religious Institutions referred to above, we believe too much attention is paid on the friction and fragmentation of Jerusalem and not enough on its potential for communal integration and spiritual growth. The purpose of this committee would be to enhance both the role of the holy sites as inspiring symbols of the three faiths and the religious experience of worshippers and visitors alike through:

- The aesthetic appearance of the OC, of the Holy Sites through music, art, language and performance
- The introduction of programmes promoting toleration and respect

The working group would consider the cooptation of national and municipal representatives.

c) Heritage and Archaeology Working Group (to be completed in the light of the Governance paper)

Responsibilities:

- Advise the OCA on the nature and possible contentiousness of sites to be excavated.
- Oversee the excavation of religious and cultural sites according to international standards and procedures.
- Maintenance, conservation and repair issues
- Work closely with UNESCO and ICOMOS

This working group would comprise OCA officials, competent residents and external professionals so that the community would have access to discussions. They would be an opportunity for plans to be aired in a transparent way and technical inputs received. The purpose would also be to identify potential conflict and solutions.

- d) **Arbitration and Dispute Resolution Working Group** (to be completed in the light of the work on Dispute Resolution.)

The purpose of the Commission is to address the ongoing disputes over holy sites between the religious communities.

Responsibilities include

- Compiling data on the nature of the dispute
- Ensuring that all parties have an opportunity to express their views
- Seek to resolve disputes through the creation of agreed protocols and Memoranda of Understanding

Intractable disputes that cannot be resolved in this way will be referred to an independent panel comprising

- Members of the religious communities
- Respected competent international
- Relevant professionals (lawyers, architects, archaeologists, accountants, etc)