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GOVERNANCE WORKING GROUP

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

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Governance Working Group  
Jerusalem Old City Initiative  
Department of Political Science  
University of Windsor  
401 Sunset Avenue  
Windsor, Ontario, Canada  
N9B 3P4

[www.uwindsor.ca/jerusaleminitiative](http://www.uwindsor.ca/jerusaleminitiative)

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Michael J. Molloy, Michael Bell, and John Bell  
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## Executive Summary

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

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

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

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

### **Key Characteristics and Functions of the Special Regime**

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

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

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

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

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