



CONTESTED SITES IN JERUSALEM

The Jerusalem Old City Initiative

EDITED BY
TOM NAJEM, MICHAEL J. MOLLOY,
MICHAEL BELL, AND JOHN BELL

ROUTLEDGE



In this third and final volume of the Jerusalem Old City Initiative, the authors have delved into what one has termed “ground zero” of the Israeli–Palestinian conflict, namely the holy sites in Jerusalem. This volume reminds us that the issues related to the holy sites extend beyond Israelis and Palestinians, and are of immense importance to other important stakeholders, including the world community of Christian, Muslim, and Jewish believers. As complex and emotionally-charged as religious issues in Jerusalem can be to all parties, the authors demonstrate practical and workable solutions for control, access, security, and preservation of the dignity of the places holy to the three great monotheistic religions. This is a critical, must read for statesmen, negotiators, and leaders of all faiths. It is an equally critical reminder that seemingly intractable problems, including religious problems, are resolvable.

Daniel Kurtzer, *Woodrow Wilson School of Public and International Affairs,
Princeton University; former U.S. Ambassador to Egypt and Israel*



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CONTESTED SITES IN JERUSALEM

Contested Sites in Jerusalem is the third and final volume in a series of books which collectively present in detail the work of the Jerusalem Old City Initiative, or JOCI, a major Canadian-led Track Two diplomatic effort, undertaken between 2003 and 2014. The aim of the Initiative was to find sustainable governance solutions for the Old City of Jerusalem, arguably the most sensitive and intractable of the final status issues dividing Palestinians and Israelis.

This book examines the complex and often contentious issues that arise from the overlapping claims to the Temple Mount/Haram al-Sharif, the role of UNE-SCO, and the major implications of the JOCI Special Regime for such issues as archaeology, property, and the economy. Part I is dedicated to holy sites – ground zero of the Israeli–Palestinian conflict, a point reinforced by the autumn 2014 disturbances which threatened to spiral out of control and engulf Palestinians and Israelis in yet another wave of violence. Parts II–IV of the volume contain studies on archaeology, property, and economics that were written after the completion of the Special Regime model, specifically to address in depth how a Special Regime would deal with each of these three important areas.

Contested Sites in Jerusalem offers an insightful explanation of the enormous challenges facing any attempt to find sustainable governance and security arrangements for the Old City in the context of a peace agreement between the Israelis and the Palestinians. It will therefore be of immense value to the policy-making community, as well as anyone in academia with a focus on Middle East politics, the Israeli–Palestinian conflict, and the Middle East peace process.

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First published 2018

by Routledge

2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge

711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2018 selection and editorial matter, Tom Najem, Michael J. Molloy, Michael Bell, and John Bell; individual chapters, the contributors

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British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Names: Najem, Tom, editor. | Molloy, Michael J., editor. | Bell, Michael (Ambassador), editor. | Bell, John (Diplomat), editor.

Title: Contested sites in Jerusalem : the Jerusalem Old City Initiative / edited by Tom Najem, Michael J. Molloy, Michael Bell, and John Bell.

Description: First edition. | Milton Park, Abingdon, Oxon ; New York, NY : Routledge, 2018. | Series: UCLA Center for Middle East Development (CMED); 14 | Includes bibliographical references and index.

Identifiers: LCCN 2017021117 | ISBN 9781138666566 (hbk) |

ISBN 9781138666641 (pbk) | ISBN 9781315619279 (ebk)

Subjects: LCSH: Yerushalayim ha-'atukah (Jerusalem) | Sacred space--

Jerusalem. | Sacred space--Political aspects--Jerusalem. | Historic sites--

Jerusalem. | Historic sites--Political aspects--Jerusalem. | Archaeology--

Political aspects--Jerusalem. | Religion and politics--Jerusalem. |

Jerusalem--International status. | Jerusalem Old City Initiative.

Classification: LCC DS109.95 .C66 2018 | DDC 956.94/42--dc23

LC record available at <https://lccn.loc.gov/2017021117>

ISBN: 978-1-138-66656-6 (hbk)

ISBN: 978-1-138-66664-1 (pbk)

ISBN: 978-1-315-61927-9 (ebk)

Typeset in Bembo

by Sunrise Setting Ltd, Brixham, UK

In memory of Michael Bell, co-founder of the Jerusalem Old City Initiative – diplomat, scholar, commentator and friend – who dedicated his life to the service of his country and the search for peace in the Middle East.



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Asian expellees for resettlement in Canada in 1972, oversaw implementation of the refugee provisions of the 1976 Canadian Immigration Act, and coordinated the movement of 60,000 Indochinese refugees to Canada in 1979–80. A career Foreign Service officer, he served in Japan, Lebanon, the USA, Geneva, Jordan (twice), Syria, and Kenya. He is co-author of *Running on Empty: Canada and the Indochinese Movement, 1975–1980* (McGill–Queen’s University Press, 2017)

Michael Bell is Co-Director of the Jerusalem Old City Initiative and served as the Paul Martin Senior Scholar on International Diplomacy at the University of Windsor from 2005 to 2013. Currently, he is an Adjunct Professor at the University of Windsor and Senior Fellow at the Norman Patterson School of International Affairs at Carleton University. He has served in the Middle East for many years, as Canada’s Ambassador to Jordan (1987–90), then to Egypt (1994–98), and Israel (1990–92, 1999–2003), and he was also the Executive Assistant for Middle East Affairs to the Honourable Robert Stanfield (1978–79), Director of the Middle East Relations Division (1983–87), Director General for Central and Eastern Europe (1992–94), and Fellow at the Weatherhead Centre for International Affairs at Harvard University (1998–99). Bell was also appointed as Chair of the International Reconstruction Fund Facility for Iraq (IRFFI) Donor Committee (2005) and the Senior Scholar of Diplomacy at the Munk Centre for International Studies at the University of Toronto (2003–05). His comments on Middle East affairs are often sought by the press, and he is a regular contributor to the *Globe and Mail*.

John Bell is Co-Director of the Jerusalem Old City Initiative, Director of the Middle East and Mediterranean Programme at the Toledo International Centre for Peace (Spain), and former Middle East Director with Search for Common Ground, Jerusalem. He was a Canadian and United Nations diplomat, serving as Political Officer at the Canadian Embassy in Cairo (1993–96), a member of Canada’s delegation to the Refugee Working Group in the Peace Process (1992–93), Political Advisor to the Personal Representative of the Secretary-General of the United Nations for southern Lebanon (2000–01), Advisor to the Canadian government during the Iraq crisis (2002–03), and Consultant to the International Crisis Group on Jerusalem. Bell was also a spokesperson for the Canadian Department of Foreign Affairs and Communications Coordinator for the Signing Conference for the International Treaty to Ban Landmines (1997). He is often asked to comment about the Middle East and has written numerous pieces for magazines and newspapers worldwide.

Authors

Nazmi al-Jubeh is Professor of History and Archaeology at Birzeit University in Jerusalem and Trustee at the Arab Thought Forum. From 1994 to 2010, he was Co-Director of RIWAQ – a Ramallah-based institute that strives to conserve architecture. He is a leading specialist in the archaeology of the Old City of Jerusalem

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Nadav Halevi is an Emeritus Economics Professor at the Hebrew University of Jerusalem and the Aron and Michael Chilewich Professor Emeritus of International Trade. He has conducted numerous research projects focusing on areas such as trade liberalization in developing countries and is particularly interested in the international and domestic economies of Israel. His more recent publications include *Middle East Integration and the Barcelona Process* (Agora without Frontiers, 2008) and *Liberalizing Foreign Trade: The Experience of Israel* (Basil Blackwell, 1991).

Leonard Hammer is a Visiting Scholar at the University of Arizona and the David and Andrea Stein Visiting Professor of Modern Israel Studies (2011–15). He is an expert on Jerusalem and the international legalities of holy places and is also an Adjunct Professor at the Rothberg International School at the Hebrew University, as well as Academic Director of Shurat HaDin, and an International Expert for the Open Society Institute. From 2004 to 2005, Hammer was a Consultant to the Israeli Ministry of Justice in the International Division. He was also a Court Attorney at the New York Supreme Court in the early 1990s, and a Law Clerk at the Israel Supreme Court (1989–90). He recently co-edited the books *Sacred Space in Israel and Palestine: Religion and Politics* (Routledge, 2012) and *Holy Places in the Israeli–Palestinian Conflict: Confrontation and Co-existence* (Routledge, 2010).

Ephraim Kleiman is the Don Patinkin Emeritus Professor of Economics at the Hebrew University and a leading specialist on the Palestinian economy and its relationships with Israel. He has been involved in both formal and informal discussions regarding the Israeli–Palestinian dispute, and was the Senior Economic Advisor to the Israeli delegation at the Israel–PLO economic negotiations in Paris in 1993–94. Kleiman was also a Research Fellow at the Truman Peace Institute, Jerusalem, from 1994 to 2001, and has held numerous visiting appointments, such as at the Kennedy School of Government at Harvard University, US Institute of Peace in Washington, DC, the London School of Economics, and MIT.

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Daniel Seidemann is a lawyer and expert on the legal and political dimensions of Jerusalem, particularly municipal operations, urban planning, and residency. He is the founder of Terrestrial Jerusalem – an NGO that works towards a two-state solution in resolving the issue of Jerusalem – and also founded Ir Amim – a non-profit association dedicated to making Jerusalem a more viable and equitable city for Israelis and Palestinians. Seidemann has participated in numerous unofficial talks between Israelis and Palestinians since 1994, and from 2000 to 2001, he served as a member of an expert committee authorized by Prime Minister Barak’s office to implement the emerging political understandings with the Palestinians. In 2010, he was awarded the title of an honorary Member of the Order of the British Empire, in recognition of his work in Jerusalem.

Anneke Smit is an Associate Professor in the Faculty of Law at the University of Windsor and a legal specialist on property and expropriation, immigration, and refugees. She has worked with the Organization for Security and Co-operation in Europe’s (OSCE) Mission in Kosovo, a human rights NGO in Tbilisi, Georgia, and in refugee camps for Kosovo Albanians with Citizenship and Immigration Canada (1999). She is also Co-creator and Co-moderator of the Canadian Property Law Network, and previously practised immigration and refugee law with the Canadian Department of Justice. From 2012 to 2013, she was a Visiting Fellow at GREDIAUC, Université d’Aix-Marseille, France. Smit recently authored *The Property Rights of Refugees and Internally Displaced Persons: Beyond Restitution* (Routledge, 2012), and co-edited *Private Property, Planning and the Public Interest*.

David Viveash is a former Canadian diplomat and Senior Research Fellow at the University of Windsor, and currently an international affairs consultant. From 2011 to 2013, he was Director of the Carter Center Field Office for Israel and the Occupied Palestinian Territory. In 2003, he was appointed Canadian Ambassador to Libya, after which he became Canadian Representative to the Palestinian Authority (2006–08). Further, Viveash was Director of the Peacebuilding and Human

Security Division at the Department of Foreign Affairs and International Trade (2000–03), Deputy Director of the Non-Proliferation, Arms Control, and Disarmament Division (1998–2000), as well as a lead Canadian negotiator on the Kimberley Process Certification Scheme. He also served as Deputy Head of Mission at the Canadian Embassy in Tel Aviv, and was extensively involved in the Multilateral Talks of the Middle East Peace Process.

ACKNOWLEDGEMENTS

When we began to work on the project that became the Jerusalem Old City Initiative (JOCI) back in 2003, we had no idea that we were setting out on a decade-long journey. In the course of that decade, which involved dozens of trips to Jerusalem and the region, and countless meetings, we had the great privilege of working with a large number of talented men and women whose kindness and patience made the work a pleasure.

In the course of this Initiative, we consulted close to two hundred individuals and dozens of institutions in Israel, the Palestinian territories, the Arab world, Europe, and the United States and Canada. To all those who gave us their time, ideas, and perceptions, we are deeply grateful. We quickly realized that to tackle such a complex and politically fraught subject as the Old City of Jerusalem, we needed to count on the knowledge, wisdom, and political acumen of people who knew much more about the topic than we did. Our success was built on their knowledge, their political judgement, and their willingness to travel along with us on that long journey.

Many of these people were initially cautious about engaging in another Track Two initiative dealing with possibly the most difficult of the issues dividing Israelis and Palestinians. But the idea that the key to resolving the problems posed by the Old City might be found by thinking through a Special Governance Regime had its own attraction. We were encouraged to find people from both sides coming to regard the JOCI project as their own.

We would like to acknowledge the enormous contribution made by these people whom we have come to regard as highly valued partners and, in many cases, friends. At the last formal meeting of our regional and international partners, we found that many of the participants were reluctant to see the project end, signalling that it had become as important to many of them as it was to us. That being said, we do not claim that every element that found its way into our proposal had the

unanimous approval of those whose contributions we acknowledge here. At the end of the day, we, the managers of the Jerusalem Old City Initiative, take responsibility for the choices we have made.

We were extremely fortunate early in the process to encounter Ambassador Arthur Hughes of the Middle East Institute. Art was with us at the critical Istanbul meeting and participated vigorously in the Security and Governance working groups, where his deep Middle East experience and his diplomatic skills helped to shape the conclusions of both groups. Beyond that, the esteem and respect he commands in Washington and his wide network of contacts enabled him to guide us through the Washington labyrinth and gain access to critical American political figures and influential public servants. Art became the voice of JOCI in Washington, and an essential member of our team.

We were also fortunate that two distinguished and exceptionally knowledgeable Jerusalemites, Nazmi al-Jubeh and Daniel Seidemann, joined the JOCI family early and, despite occasional misgivings about the directions we were taking, contributed to virtually every aspect of the work. Indeed, their contributions, insights, and ideas are dotted throughout the volumes.

Ambassador Daniel Kurtzer and the late Shira Herzog provided wise counsel and, at critical moments in the process, injected creative ideas that illuminated the way forward.

Academics Menachem Klein and Salim Tamari provided thoughtful critiques of our ideas as they emerged.

The Jerusalem Old City Initiative's Security Working Group, chaired by Michael Bell, was spearheaded by General John De Chastelain, former RCMP Deputy Commissioner Roy Berlinquette, and Ambassador Art Hughes. JOCI recruited a highly expert security team of Israelis and Palestinians; notable among these were Pini Meidan-Shani, Moty Cristal, and Issa Kassassieh, and several others who, for various reasons, asked not to be identified. The regional teams also included Arieh Amit, Jibrin al-Bakri, Reuven Berko, Yasser Dajani, and Peri Golan.

The Jerusalem Old City Initiative's Governance Working Group, chaired by Mike Molloy, was spearheaded by David Cameron, Art Hughes, and Jodi White, with important contributions from Shira Herzog, Tim Donais, and Lara Friedman. Regional team leaders included two distinguished veterans of the Middle East peace process, Gilead Sher and Hiba Hussein, with specialized legal expertise being provided by Mazen Qupty and Jonathan Gillis. We also drew heavily on the expertise of the Jerusalem Institute for Israel Studies, including Ruth Lapidot, Ora Aheimer, and Israel Kimhi, and the Palestinian think-tank, Al Mustakbal Foundation.

Expertise on the hypersensitive holy sites was provided by Michael Dumper and Marshall J. Breger, while Trond Bakkevig, convenor of the Council of Religious Institutions of the Holy Land, facilitated a dialogue between the JOCI team and key Muslim, Jewish, and Christian leaders.

At a critical moment in the process, senior Israeli and Palestinian members signalled the need to review the basics of our proposals from a political perspective.

Thus was born the London Caucus consisting of Gilead Sher, Pini Meidan-Shani, Ambassador Manuel Hassassian, Yasser Dajani, and Moty Cristal among others.

A more profound understanding of some of the issues that a Special Regime would have to deal with was undertaken within three separate projects on archaeology, property, and economic implications. Lynn Swartz Dodd provided insights into the archaeological issues, Anneke Smit and David Viveash delved into the complex and murky world of private property in the Old City, while economists Ephraim Kleiman and Nadiv Halevi teased out the economic implications of a Special Regime.

A project of this magnitude required the cooperation and assistance of a wide variety of institutions.

This undertaking would not have been possible without the generous financial assistance of the Canadian Department of Foreign Affairs and International Trade (DFAIT), the Canadian International Development Agency (CIDA), and the International Development Research Centre (IDRC). We also received assistance at critical junctures from the Centre for International Governance Innovation (CIGI) in Waterloo, Ontario, the Woodrow Wilson School for Public and International Affairs at Princeton University, Search for Common Ground, and the Toledo International Centre for Peace in Madrid. For the support of all these, we are most grateful.

Rosemary Hollis of Chatham House arranged a particularly useful workshop that helped us to understand the business of creating institutions in areas emerging from conflict. Emma Murphy helped to organize a meeting at Durham University that marked the launch of JOCI as an actual Track Two exercise.

We wish to express our gratitude to the Canadian embassies in Tel Aviv, Washington, DC, and Amman; the Canadian representative office in Ramallah, the Canadian High Commission in London, the permanent missions of Canada to the United Nations in New York and Geneva; and the Canadian permanent mission to the European Community in Brussels. The staff of these various missions was invariably supportive and helpful.

It is important to note that none of our funders, at any time, approached us with views or advice respecting the direction of our work. We alone are responsible for JOCI's content and recommendations. Needless to say, any shortcomings are ours and ours alone.

Early institutional support was provided by the Munk Centre for International Studies at the University of Toronto, which published our initial Discussion Document in their MCIS Briefing Series. We are appreciative of the support of Janice Stein, Marketa Evans, and Sebastian Bouhnick.

The University of Windsor is the institutional home of the Jerusalem Old City Initiative. The university was a major source of funding, accommodation, and administrative support. President Alan Wildeman, the Vice President Academic, Neil Gold, and the Dean of the Faculty of Arts and Social Sciences, Cecil Houston, recognized both the possibilities and the significance of what JOCI was attempting to do and were unstinting in their constant support. For this we are most grateful.

JOCI is situated in the Department of Political Science, whose faculty members, including Abdel Salam Sidahmed and Roy Amore, provided us with a high level of expertise on religious matters. The JOCI Project Manager's team included a blend of staff members and talented graduate students. They included Rachelle Badour, Derek Barker, Crystal Ennis, Felicia Gabriele, Jonathan Nehmetallah, Norman Nehmetallah, Giovanna Roma, Remy Sirls, and Shayna Zamkanei.

A special note of thanks to all who have assisted in preparing the volumes for publication, most especially to Jo Molloy and Giovanna Roma, both of whom spent countless hours over the years doing the often thankless but essential tasks associated with editing a work of this magnitude. We also appreciate the efforts (and patience) of Joe Whiting, senior acquisitions editor at Routledge, who took a strong interest in this project some time ago, and continued to provide unwavering support through to publication. Finally, special thanks to Steven Spiegel and Elizabeth Matthews for also seeing value in the project and including it in their excellent UCLA series on Middle East Security and Cooperation.

INTRODUCTION

Contested Sites in Jerusalem represents the third and final instalment in a series dedicated to the decade-long work (2003–14) produced by the Jerusalem Old City Initiative (JOCI), a major Canadian-led Track Two exercise, based at the University of Windsor, in Windsor, Ontario. The aim of the Initiative was to find sustainable governance solutions for the Old City area of Jerusalem, arguably the most sensitive and complex issue in the long-standing conflict between Israel and the Palestinians.

The first volume, *Track Two Diplomacy and Jerusalem: The Jerusalem Old City Initiative*, describes the decade-long process, analyses JOCI in the context of current scholarship on Track Two diplomacy, and describes in considerable detail the Special Regime governance model, JOCI's proposal for resolving the conflict over Jerusalem's Old City. Briefly, the Special Regime, as it emerged from the JOCI process, focuses on the unique, conflict-creating characteristics of the Old City as a place rather than the people who reside, work in, or visit the Old City. According to JOCI, the elements of a Special Regime should be embedded in an eventual Israeli–Palestinian treaty and would include a Governance Board consisting of Palestinians, Israelis, and countries designated by them, an empowered Chief Administrator to manage elements of friction, an international police service, and a small number of specialized departments. It would have close links with a consultative committee of religious leaders. Residents of the Old City would exercise their political rights as citizens of Israel and Palestine, and would receive social, educational, and civic services from those countries.

The second volume, *Governance and Security in Jerusalem: The Jerusalem Old City Initiative*, presents a series of position papers written by our Israeli and Palestinian partners on governance and security issues. These papers collectively informed the development of the Special Regime governance model.

This third volume, *Contested Sites in Jerusalem: The Jerusalem Old City Initiative*, examines the complex and indeed often contentious issues that arise from the

overlapping claims to the Temple Mount/Haram al-Sharif, the role of UNESCO, and the major implications of the JOCI Special Regime for such issues as archaeology, property, and the economy.

Part I of this volume is dedicated to holy sites, the significance of which is aptly and succinctly captured at the beginning of one of the studies. ‘Metaphorically, the holy sites in Jerusalem’s Old City are ground zero of the Israeli–Palestinian conflict’, a point reinforced by the autumn 2014 disturbances which threatened to spiral out of control and engulf Palestinians and Israelis in yet another wave of violence.

The main purpose of the holy site studies is to provide the JOCI Governance Working Group with a more developed understanding of the enormous challenges facing any attempt to find sustainable governance and security arrangements for the Old City in the context of a peace agreement between the Israelis and the Palestinians.

The first two studies offer possible governance models or frameworks for managing the holy sites of the Old City.

Chapter 1, ‘Options for the administration of the holy places in the Old City of Jerusalem’, was written by Professor Yitzhak Reiter, a political scientist with particular interest in the conflict resolution of sacred spaces and holy places. The study provides: (1) a succinct historical account of the problems facing the question of holy sites; (2) a description of the issues complicating a solution to the conflict over holy sites, especially with respect to the Harem al-Sharif/Temple Mount site; (3) a description of possible options for resolving the conflict over holy sites; and (4) a list of problems which must be addressed regarding holy sites in any future agreement for the Old City.

Chapter 2, ‘A security and management framework for the holy sites of the Old City of Jerusalem’ was written by Professor Michael Dumper, a noted specialist on Jerusalem. The study provides a security and management framework for the holy sites based on what he refers to as a five-pillar model, namely: (1) recognition of the autonomy of the internal administration of the current custodians of the holy sites; (2) a relevant department or departments within the proposed Old City administration such as a religious affairs department and a heritage and archaeology department; (3) a holy sites police unit; (4) an independent religious council; and (5) specialized working groups to deal with specific issues.

The two other studies completed on holy sites address international elements of the Old City. Chapter 3, co-written by Marshall J. Breger, Professor of Law at the Catholic University in Washington and international member of the Governance Working Group, and Leonard Hammer, an expert on Jerusalem and the international legalities of holy places, focused on the international law of holy places. Chapter 4 contains a second study by Dumper, which focused on the international norms and the preservation of culture and heritage, highlighting, in particular, the role of UNESCO.

Parts II–IV of the volume contain studies on archaeology, property, and economics that were written after the completion of the Special Regime model, specifically

to address in depth how a Special Regime would deal with each of these three important areas. In this respect, they differ from the studies found in Volume II, and, indeed, in Part I of this volume, that were undertaken to assist in the development of the Special Regime model.

A substantial study addressing how a Special Regime might deal with archaeology is provided in Chapter 6, and is titled ‘Sustainable management of archaeology and heritage in the Old City of Jerusalem’. It was written by Lynn Swartz Dodd, an archaeologist from the University of Southern California, and the lead international member of the archaeology project set up by JOCI to tackle this issue.

The study addressing how a Special Regime might deal with property is addressed in Chapter 8 and is titled ‘Property under the Old City Special Regime’. It was co-written by Anneke Smit, Professor of Law at the University of Windsor, and David Viveash, a former Canadian diplomat, the lead international members of the property project established by JOCI to address this issue.

The study addressing how a Special Regime might deal with economic issues is addressed in the last chapter of the volume. Titled ‘Implications of alternative Israeli–Palestinian trade agreements for the Jerusalem Old City Special Regime’, the study was co-written by Israeli economists Nadav Halevi and Ephraim Kleiman.

Parts II–IV also contain two commissioned studies which provided background material on the challenges facing archaeology and property, and assisted the teams working on the archaeology and property projects in the development of their own products. These two studies, both co-written by Nazmi al-Jubeh and Daniel Seidemann, are found in Chapter 5 and Chapter 7.

Before turning to the studies, it is worth emphasizing their significance. The papers on holy sites played an important role in informing the Special Regime model laid out in Volume I (*Track Two Diplomacy and Jerusalem*), giving it authoritative input from noted specialists in the field. The three studies on archaeology, property, and economics provided the first in-depth attempt to address how the Special Regime governance model would deal with these challenging issues.

Finally, we hope that readers will find the insights contained in each of the studies to be of value, and an important contribution to the growing body of literature on this fascinating yet troubled city.