OPEN FORUM

THINKING OUTSIDE THE BOX: ALTERNATIVES TO THE ONE- AND TWO-STATE SOLUTIONS

JPS has always sought to provide a forum for discussion and productive debate on emerging trends in thought regarding the Arab-Israeli conflict and its peaceful resolution. It is in this light that JPS offers the following two pieces, without comment or endorsement, in the hope that they might inspire serious academic discussion, perhaps even within the pages of JPS. The editors welcome responses (they may be sent to jps@palestine-studies. org), although for space reasons we cannot guarantee that all of them will be published.

In recent years, faced with a stalled Israeli-Palestinian peace process and Israel's continued creation of facts on the ground, many have started to question whether it is still possible to implement a viable two-state solution, which is the peace process's stated goal. A number of alternative ways forward in the conflict have therefore been suggested that go beyond the usual one-state solution. As part of an exercise of "thinking outside the box," JPS is running two essays that suggest unconventional frameworks for dealing with the conflict.

The first essay, by Swedish diplomat Mathias Mossberg, places the Israeli-Palestinian conflict in the context of a discussion of the concept of sovereignty and its erosion and outlines the basic elements of a "parallel states" structure as a possible vision for the Israeli-Palestinian future. This scenario is currently being studied in the Swedish government-funded "Parallel States Project" at the Centre for Middle Eastern Studies at Lund University. The project, launched in 2008, gathers Israeli and Palestinian academics and thinkers along with international experts to explore the implications of a parallel states structure involving two distinct states, Israel and Palestine, and distinct institutions sharing sovereignty over the entire area between the Mediterranean and the Jordan River. The project does not pretend to provide solutions or build a model, but to explore the issues and develop the questions that would arise from such a scenario. The project intends to present a first report at a conference in Lund in September 2010.

The second essay, by Israeli scholar Lev Grinberg, starts from a critique of the one- and two-state solutions to suggest an alternative vision including elements of both. The proposed formula is an Israeli-Palestinian Union with different layers of state institutions: a shared administration based on parity representation located in the unified capital of Jerusalem, two separate democratic nation-states, and seven provinces (or federal states) belonging to one of the two nation-states. The author sees this "1–2–7 states" vision of the future as a way of containing the conflict in the absence of an ideal solution.

ONE LAND, TWO STATES? PARALLEL STATES AS AN EXAMPLE OF "OUT OF THE BOX" THINKING ON ISRAEL/PALESTINE

MATHIAS MOSSBERG

THE PEACE PROCESS between Israelis and Palestinians is not making progress. There is neither peace nor process. Despite a new, seemingly determined, political leadership in the United States, prospects for a breakthrough remain bleak. Relations between Israelis and Palestinians have reached an all-time low. The current absence of large-scale violence cannot be taken as evidence either of stability or progress and is unlikely to continue.

In recent years, more and more observers have concluded that neither the physical nor the political basis for a viable Palestinian state still exists. Physically, the territory of the West Bank, which is supposed to constitute the heartland of a Palestinian state, continues to be consumed by Israeli settlements and new roads. Politically, Israel controls almost all the territory and shows little willingness to return the minimum necessary to make a territorially viable Palestinian state possible. The government's refusal to accept a genuine settlement freeze has also dispelled any remaining doubts for many Palestinians about the ultimate intentions of Israeli leaders.

Has time run out for a traditional two-state solution, with two states living side by side sharing the territory between the river and the sea?

PARALLEL SOVEREIGNTY IN A GLOBALIZED CONTEXT

The Israeli-Palestinian conflict has generally been seen as a conflict over land, and territory and borders have been key factors ever since negotiations began to be seriously envisaged following the 1967 war. Territory is at the heart of the two-state solution that was officially adopted by the Palestinians in 1988 and implicit in the Oslo process. Territory, borders, and sovereignty were also major negotiating elements at the failed Camp David summit of July 2000.

But while the Israeli-Palestinian conflict has remained stubbornly focused on sovereignty and control of territory, a new understanding of the implementation of sovereignty has been emerging. The concept of sovereignty has eroded under the pressure of globalization and the impact of universal principles and transnational structures, suggesting new dimensions in how states

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relate to each other and to their citizens. Statehood has become less about territory and more about access to markets and technology and the rule of law. The meaning and importance of borders have been relativized. Thus, as international law and principles have been perforating national boundaries in ways and at a pace not earlier seen, international structures beyond the nation-state have started to have an important impact on the legislative space of national political bodies.

These changes in the implementation of sovereignty have led some commentators to claim that the Westphalian era is coming to an end. There is now talk about the nation-state not as the final product of the international system but more as a parenthesis in history, stretching from the mid-seventeenth century until present days.

This erosion of sovereignty affects a sovereign entity's capacity both to act on the international level and to manifest itself internally vis-à-vis its citizens. In both cases, sovereign space has had to be ceded to other entities, including international institutions and nonstate actors.

This process has gone so far that the notion of the divisibility of sovereignty has entered the scholarly debate. According to one line of thought, the previously accepted "norm" of indivisibility of sovereignty is actually untenable. In reality, sovereignty has always been divisible and the norm of indivisibility has been a veil meant to conceal real power relations. In practice, the implementation of sovereignty derives from both external and internal sources and can thus be described as divided.

If sovereignty can be divided, it can also be partial and shared. The notion that sovereignty is not a given but gets its material content from decisions made by political bodies opens up new avenues, or rather confirms roads already embarked upon. There are many cases of shared sovereignty, for example in the form of federations and condominiums. A condominium is a historically well-established, if nowadays rather uncommon, form of governance, with two states sharing sovereignty over a given territory, normally in borderlands between them. Condominiums can be described as examples of horizontally shared sovereignty, whereas federations can be regarded as examples of vertically shared sovereignty. Another application of shared sovereignty is governance by international institutions that can be exercised over special sectors of society. Partial sovereignty is even more common if federative solutions are included in this category.

Thus it can be said that the exclusive link (traditionally viewed as sacrosanct) between sovereignty and territory began to erode long ago. The notion of parallel sovereignty, defined as two sovereign subjects voluntarily sharing power over a given territory, is a change in degree rather than in kind (compared to a condominium, parallel sovereignty means shared power not only over territory lying between the two states but over the entire area covered by the two states). Parallel sovereignty therefore constitutes just another form of shared sovereignty, even if its application implies a specific set of institutional arrangements.

THE BASICS OF THE CONFLICT: FEARS, CONCERNS, AND ASPIRATIONS OF THE TWO SIDES

As noted above, the Israeli-Palestinian conflict has remained stubbornly territorial and the two-state solution is its present paradigm. Yet a reasonable territorial division no longer seems feasible. The web of Israeli settlements and roads has settled like a geological sediment over West Bank Palestinian society, and the Israeli "matrix of control" is slowly suffocating any substantial development. Moreover, decades of focus on territoriality as the fundamental issue have led nowhere, and prospects are dim for a mutually acceptable and sustainable agreement on this basis. Only when a serious effort is made to take a longer-term and fresher approach to the conflict can there be any hope of finding a way forward.

It is from this perspective that a discussion is called for about basic fears, concerns, and aspirations of the two sides. Obviously, any such discussion would initially elicit very different responses from Israelis and Palestinians, but it would also likely reveal basic elements common to both.

For the Israelis, the question of security in its widest sense is fundamental and indeed existential. The creation of the State of Israel made it possible for Jews to be in charge of their own destiny and have a secure place on earth; the Jewish state and the Jewish people's specific attachment to the land of Israel are thus seen as closely linked to Jewish identity.

Yet the existential security of the Jewish people is felt to be under constant threat in two fundamental ways: first, the external physical threat against the Israeli state, and, second, the internal demographic threat, where the approximate parity between Israelis and Palestinians "between the river and the sea" is fast eroding in favor of the Palestinians. With regard to the first concern, despite the considerable improvement in Israel's geostrategic situation over the last two decades through peace agreements with Egypt and Jordan and the disappearance of any military threat from Iraq, Israel's sense of external threat has not abated, with fears now centered primarily on Iran's nuclear development. With regard to the second issue, demographic developments are seen as representing a fundamental threat to the existence of Israel as a democratic and Jewish state. These fears crucially affect Israel's preoccupation with control of territory and access to land.

For the Palestinians, the defining issue is not security as such but loss of land: three-quarters of their homeland was lost in the 1948 war and their access to land in the West Bank today is constantly shrinking under the impact of the separation wall, the continuing growth of settlements and roadworks, and ongoing land expropriations. The land issue for Palestinians is, of course, in itself a key security issue, bound up with fears of ultimate loss of identity. Moreover, Palestinians feel physically threatened wherever they are, in Israel, in the occupied territories, in refugee camps, in neighboring states, and in the diaspora. Besides access to land, security, and identity issues, the Palestinian situation entails a need for dignity, equality, and justice, and full recognition of the right of return.

For Israelis and Palestinians, the common issues can thus be boiled down to security, identity, and access to land. Most other issues can be subsumed under these headings. The question is whether there are ways to ensure mutually satisfactory solutions to these issues and if some kind of scenario can be devised based on these common denominators. Is it possible to end the occupation and fulfill the Palestinian right of return in a way that does not conflict with Israeli security needs and preserves a Jewish state, while at the same time giving both peoples access to the land? Could there be a scenario based on the principle of shared, or parallel, political authority? Is there a way to think in terms of two parallel state structures on the same territory?

ONE LAND, TWO STATES: THE "PARALLEL STATES" STRUCTURE

In a parallel states structure as envisaged in our project, sovereignty and political authority over the entire territory would be shared between the two states. In other words, the two states would be superimposed on one another in the same territory, with a number of functions exercised jointly by the institutions of both states and others separately by each state. State sovereignty would be primarily linked with the individual and only secondarily with territory. Citizens of both states would be able to move freely and settle in the whole area, and internal physical barriers would be lifted.

Obviously, clear limits on the authority that each state could exercise over the territory and a clear division of powers between the two states would have to be established. There would also need to be some kind of permanent bilateral negotiation mechanism for solving issues and disputes as they arise. The two states could retain their national symbols and have separate citizenships and political bodies (governments, parliaments, administrations, and other state institutions), each responsible to its own electorate. Each entity would have a high degree of independence in both internal and external matters, tempered by the need to take into account the form and power of the other parallel structure and coordinate in matters of common interest.

It would seem obvious that any parallel states structure would entail decentralized regional and/or local structures, especially since two separate "heartlands" reflecting existing population concentrations would most likely be formed. A Jewish heartland around the coastal plains, particularly around greater Tel Aviv, would seem logical, as would a Palestinian heartland in areas around Ramallah and other cities in the West Bank, as well as in Gaza. Jerusalem is a special case that would require its own approach.

ECONOMIC STRUCTURE

The economic dimension of a parallel states system is perhaps less difficult to imagine than its overall structure, because the Israeli and Palestinian economies—despite the very unequal dynamics and the core-periphery relationship between them—can already be said to constitute one macroeconomy.

Elements of an economic union are already present (external customs enve-
lope, common currency, elements of a joint labor market, flow of goods) and
could serve as the basis for integration. A viable economic structure would
require extensive harmonization, not only of economic policies but also of
business laws and regulations as well as tax systems. The most daunting task
would be building up the Palestinian economy in the aim of balancing Israeli
economic supremacy. Only if the present inequalities are substantially reduced
could a viable joint Israeli-Palestinian economy possibly be sustained.

LEGAL INTEGRATION AND HARMONIZATION

Legal pluralism is nothing new. Two or more legal systems have existed side
by side within the same territory throughout history. Medieval Europe is one
example, with the Catholic Church, princely fiefdoms, the guild system, and
other entities all exercising their own jurisdiction over their members regard-
less of geographic location. The Ottoman millet system is another example,
with Muslim, Christian, and Jewish jurisdictions with their own civil laws exist-
ing side by side.

In a parallel states structure, each state would in principle have jurisdic-
tion over its own citizens. This would be rather uncontroversial in areas of
Jewish and Palestinian concentrations (heartlands). In border areas between
the two communities, in mixed areas, as well as in Jerusalem, a certain ele-
ment of "extraterritorial" jurisdiction could be envisaged. Each side could keep
its court system, but a system of mixed courts may have to be developed to
handle clashes of jurisdiction and other conflicts likely to arise in a structure
of parallel legal systems.

Clearly a large part of the jurisdiction would have to be joint or at least
harmonized, applying to all citizens. This area of the law would without doubt
be the most difficult to negotiate and would involve land issues, immigration,
and other thorny questions.

OPPORTUNITIES AND CHALLENGES

A parallel states structure in principle meets both Palestinian and Israeli aspira-
tions to be able to live and work in the whole area of Mandate Palestine. Moreover,
it provides for the emergence of an independent Palestinian state, while at the
same time allowing the Israeli state to be both Jewish and democratic.

A parallel states structure would bring an end to Israeli military occupation.
By allowing the free movement of people over the entire area, it addresses
as a matter of principle both the Palestinian right of return and the Israeli
settlements issue, thus offering a possible means of resolving two of the most
intractable elements of the conflict. The structure could also accommodate the
aspirations of both peoples to have Jerusalem as their capital.

But if many of the fundamental and underlying issues are addressed in
principle, a parallel states structure also entails daunting challenges, not least

in the realm of security. These include how to achieve a workable balance in the security sphere, how to organize internal security, and how to deal with immigration and border control. The problems of shared jurisdiction, notably regarding land and immigration (potential deal breakers), have already been alluded to. It should be borne in mind, however, that many of the thorniest issues in the parallel states structure are similarly difficult in the one- or two-state scenarios. Most likely, international involvement in a number of areas would be called for.

Needless to say, even to negotiate (much less implement) a parallel states structure would require an enormous amount of confidence on both sides, perhaps especially on the Israeli side. Indeed, it is legitimate to ask why such a scenario would have any appeal to the party that today has full control over the one-state solution (in its current manifestation) and that would control the parameters (at the very least) of a two-state solution. Clearly, relative to its present situation, Israel would have the most to give up in such a shared sovereignty arrangement. At the same time, Israel is well aware that the present situation is untenable in the long run. From this perspective, a scenario that assures its most basic needs (to be a Jewish democratic state without being threatened by an emerging Palestinian majority; to gain long-term acceptance as part of the region), even while being the fairer of the three options for the Palestinians, is surely the scenario that has the greater chance of enduring.