



Negotiating Jerusalem: Towards a Palestinian Agenda

Mick Dumper

Given the history of concessions made by the Palestinian leadership during the course of the Oslo process, most observers of the Camp David summit were surprised by the firm position taken by President Yasser Arafat over the question of Jerusalem. To a large extent the principled nature of his stand on this issue, in contrast to the obfuscation and fudging on the other Final Status issues, were the cause of the hero's welcome he received on his return to Gaza and the Arab world. Whatever other compromises had been made, on this issue Arafat had not consigned the Palestinians to be the people in Arab history who had sold out on Jerusalem.

Recognizing Palestinian Sovereignty and Accommodating Change

In the aftermath of Camp David and amid the recriminations and mutual disappointments, there is an opportunity to have a more considered look at the options available to the Palestinian leadership. First, is there sufficient room for maneuver to allow

the Palestinians to re-engage realistically with the Israelis in the peace negotiations and simultaneously to retain their principled position within the Palestinian national consensus on Jerusalem? Second, but more important in terms of the long-term future of the city, how could an agenda be framed which would recognize some of the irrevocable changes that have taken place since 1967 and address the need to establish a sustainable framework which recognizes the challenges of the future? Third, United Nations Resolution 242 basically affirmed a return to the cease-fire lines of 1949 that were not the ideal division of the city by any means. Reifying those lines and divisions in a Final Status agreement would not necessarily create a harmonious environment for a modern city or serve the interests of the inhabitants of the city. A fixation on past borders will not help to consolidate a long-term agreement. Thus a realistic negotiating agenda based upon international legitimacy and a sustainable future would need not only to recognize Palestinian sovereignty in East Jerusalem and the Old City but also accommodate a changed and changing situation.

A national Palestinian consensus on Jerusalem has crystallized around the following components: Jerusalem will be the capital for both Palestinian and Israeli sovereign states within the pre-1967 internationally recognized borders and will be administered by two municipal bodies, one Palestinian and the other Israeli. The two municipalities will co-operate with regard to decision-making, provision of municipal services and infrastructure projects. In addition, there will be an equitable alloca-

tion of land use and respect for property rights, freedom of worship and access to Jewish, Islamic and Christian holy sites, and geographic contiguity of Palestinian-held areas of Jerusalem with the north and south West Bank. Finally, Jerusalem will be one city, open to all to circulate, live, and work.

Compatibility with Other Negotiated Arrangements

A Palestinian negotiating agenda designed to achieve these goals and to obtain Israeli acceptance needs to be framed by two overarching strategies: compatibility and reciprocity. Compatibility is straightforward and will not meet too many Israeli objections. It means ensuring that whatever is agreed on Jerusalem should be both consistent and compatible with positions adopted in the other Permanent Status negotiations. Border permeability, employment and residency rights, economic and fiscal arrangements, security and policing co-operation should all be compatible with other negotiated arrangements between Israel and the rest of Palestine. It would be both pointless and unworkable, for example, to agree to "hard" or impermeable borders between most of the West Bank and Israel, but have "soft" or permeable borders for the areas between East Jerusalem and Israel. Irredentists on both sides could simply enter each other's territory via Jerusalem. This requirement for compatibility, however, need not exclude some special arrangements for Jerusalem as a result of its unique status as the site of Holy Places for three religions and the site of two national capitals. Thus questions over access to holy places, taxation on

religious property and the operations of embassies will need to reflect this status.

Reciprocity: Exchange of "Goods" Between the Parties

The issue of reciprocity is more contentious but will be crucial in the attempt to maintain a national consensus. The ceding of land, of restitution claims, of access, of jurisdiction etc, to the Israelis must all be in exchange for other "goods" on the part of the Israelis, although not necessarily the same goods. Thus, each metre of the border, each house and garden within a settlement, each municipal service and legal jurisdiction obtained by the Israelis should be accompanied by a quid pro quo for Palestinians. It also should be established from the outset that the Palestinian position outlined above is not simply a starting point. It needs to be met by a reciprocal concession by Israel on de jure recognition of Arab East Jerusalem as the Palestinian capital and by the return of refugees. From the detailed surveys of Israeli opinion carried out by Professor Jerome Segal and his team and from some Israeli opinion polls conducted before the recent clashes, the prospect of such a reciprocal concession cannot be ruled out, although it may take time for the case to be made.

Negotiating Sovereignty: Avoiding Zones, Utilizing Disaggregation

How is this position of Palestinian sovereignty over East Jerusalem most likely to be obtained by the Palestinian negotiators? The tactical device most often used in negotiations is that of disaggregation - separating out difficult issues or territories into smaller parts. This tactic was used by

the architects of the Oslo process. However, for Palestinians to adopt the Oslo framework, particularly as applied to Hebron, as a model for the implementation of an agreement on Jerusalem would be a mistake. The introduction of zones, reflecting degrees of Israeli or Palestinian jurisdiction, such as Area A,B, and C in the West Bank, and Hebron 1 and 2, was designed to meet Israeli security concerns. The same security imperatives do not pertain in Jerusalem. In addition, to agree to the introduction of zones such as East Jerusalem 1,2 and 3 or Old City 1,2, and 3 would defer the issue of Palestinian sovereignty in East Jerusalem exactly at the time when the remnants of Palestinian leverage are diminishing. In fact, such a model would transform Jerusalem from a Final Status issue into yet another stage in the interim phase. It is vital, for the sake of the Palestinian national consensus and to avoid slippage in implementation, that the issue of sovereignty is not deferred indefinitely.

While the Hebron model may not be the appropriate framework for Jerusalem, the device of disaggregation can still be put to good use. The negotiable "goods" of Jerusalem need to be broken up into their constituent parts both in terms of geography and in terms of functions or responsibilities. The analogy here is a multi-layered "cake". The horizontal represents the geographic spread of the sub-areas of East Jerusalem, the vertical denotes the different layers or degrees of jurisdiction and control over political functions and responsibilities. The degrees of jurisdiction can be grouped around a number of core functions ranging from Cultural and Social Affairs, at one end of the spectrum, through the

provision of Municipal Services (local planning, road maintenance, waste disposal, tourist management etc) to the provision of Central Government Services (including housing, public works, fiscal and trade regulation etc). During the negotiations, the objective would be to create as many areas within Jerusalem where the jurisdiction are similar so that at some point a vertical slice can be made and a distinct Palestinian area delineated.

Phasing and Leaseback

An essential element in the feasibility of this tactic is to incorporate a second device, that of phasing. This would make the whole process more acceptable to the Israeli side. The device of phasing has precedents, not only in the Oslo process but also in the 1994 Israel-Jordanian Peace Treaty. It can take two forms: simple phasing and leaseback. Simple phasing is an agreement that sovereignty or jurisdictions will be ceded in stages to one party over an agreed period of time. Leaseback is the ceding of sovereignty and jurisdiction from the outset but the land is retained by lease for a given period. (See the Annexes in the 1994 Israel-Jordan Peace Treaty relating to al-Baqura and al-Ghamr areas) Thus certain areas, such as the settlements, would be under Palestinian sovereignty but leased by the Israeli government for a given period, during which time Palestinian responsibilities would be highly limited.

Strategic Corridors:

Priority for Viability

How would this work out in practice? The Palestinian side would need to identify key areas where maximum jurisdiction

should be achieved. For example, the two strategic corridors from North to South and East to West appear to be of utmost priority for the viability of both a Palestinian East Jerusalem and the West Bank. The North/South corridor would include the sub-areas of Qalandia airport and village, 'Atarot, Beit Hanina, parts of Neve Ya'acov, parts of Pisgat 'Omer, Shu'fat, Rekhessh Shu'fat, Giv'at Hamivtar, Giv'at Shapira (French Hill), Sheikh Jarrah, Wadi Joz, East Jerusalem Central Business District, Old City, Silwan, Abu Tur, Al-Sawahira, parts of East Talpiot, Sur Bahir, Umm Tuba and Jabal Abu Ghanaym. The East/West corridor would include: East Jerusalem Central Business District, Old City, Wadi Joz, Silwan, Al-Suwana, At-Tur, Ras Al-Amoud and Al-Shayah.

The objective would be to negotiate for each of these areas the highest degree of Palestinian jurisdiction over political and municipal functions and responsibilities with as synchronised a time frame as possible. For example, Palestinians should be able to achieve the synchronised transfer of jurisdictions up to the Central Government Service level in Palestinian dominated areas. In other areas they may achieve jurisdiction up to the provision of Municipal Service. They may be obliged to accept a longer time-frame for the transfer of any jurisdiction over the Israeli settlement of, say, French Hill but this delay in itself should, invoking the principle of reciprocity mentioned above, oblige Israeli concessions in other areas.

The Old City: Two Scenarios

How would this work out in practice for the Old City? There are two possible

scenarios depending upon the extent to which the principle of reciprocity has been employed. The first scenario is one where the principle is accepted and widely employed. In this scenario, the Palestinian side could consider ceding sovereignty over the Jewish Quarter in exchange for some other territorial or political goods. One can envisage the possibility of a corridor from the Jewish Quarter skirting around the Old City walls to Jaffa Gate or via a bridge across the valley to the Hebron Road. In addition, this scenario would include guarantees of freedom of worship at the Western Wall, joint ownership of the Wall itself and compensation to Palestinians and the Awqaf Administration for properties expropriated in the extended Jewish quarter. Finally, Jewish representatives would sit on a sub-municipal body such as an Old City Administrative Council. Its remit would include the co-ordination of religious festivities, pilgrimage and a number of sub-municipal functions. With respect to the concerns of the Vatican and the Christian Patriarchates, the Status Quo would be upheld and a standing forum for the arbitration of disputes would be established under international supervision. Representatives from the Christian denominations would sit on the Old City Administrative Council on a rotating basis.

In the second scenario, the principle of reciprocity is not fully employed and the final agreement over jurisdictions and borders, therefore, would closely resemble the division of the city in 1967. Such a scenario would only be acceptable to the Israeli side if there is strong measure of extraterritorialisation of the Jewish Quarter. Here the physical area concerned will be

much the same as in the first scenario with the introduction of a safe passage etc., but the relationship to the rest of the Old City will much more that of an enclave than that of a neighbouring district. Thus participation in general Old City administration would be more piecemeal and ad hoc. Representation on an Old City Administrative Council would be contingent upon other bilateral arrangements established between the Israeli and Palestinian states in other areas.

Squaring the Circle

It is clear from this agenda that there is little consensus around ideas of shared sovereignty, condominium, internationalisation or the more recently proposed "suspended" sovereignty. From a Palestinian perspective, such proposals are seen as either attempts to avoid treating Palestinian claims seriously or to provide Israel with a mechanism to continue its influence over the eastern parts of the city. From Arafat's stand at Camp David and from conversations with Palestinians close to the negotiations, it appears that the such ideas will only be entertained if they help advance Palestinian territorial control: in other words they are valued mainly as vehicles towards the goal of sole Palestinian sovereignty over East Jerusalem

In conclusion, by following the strategy of reciprocity on the question of sovereignty and the tactics of disaggregation and phasing, Palestinians can both engage in realistic negotiations with Israelis yet keep within the national consensus. A critical issue is that once the issue of sovereignty is resolved, the implementation can be introduced through a mixture of phasing de-

vices. The negotiating agenda suggested is a long and arduous one and will require the Palestinians to have the institutional structures and critical mass of expertise in place to support such an approach. Nevertheless, it offers an opportunity to square the circle

Negotiating Jerusalem

of conducting realistic negotiations with Israelis and standing by Palestinian consensus over the city.

Mick Dumper is the chair of Jerusalem Studies at Exeter University, UK.

Available from the Institute of Jerusalem Studies



Memoirs Engraved in Stone:

PALESTINIAN URBAN MANSIONS

DIALA KHASAWNEH

Photographs by Mia Gröndahl

Drawings by Firas Rahhal

