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tm-sbg

The Sovereignty Belongs to God Option for the Temple Mount/Haram al-Sharif and/or the Old City: An Analysis

1. The Problem:

An analysis of Israeli and Palestinian public opinion makes clear that it is politically impossible for either political leadership to agree to the other side having exclusive sovereignty over either the Temple Mount or the Old City. (See Negotiating Jerusalem (NJ), by Segal, Levy, Sa'id, and Katz). What is needed is a permanent way of dealing with sovereignty which does not require specifying that one party or the other is the exclusive sovereign.

2. The Sovereignty Belongs to God (SBG) option:

This option is one of several ways of circumventing the attribution of exclusive sovereignty. Other options (e.g. joint sovereignty, divided sovereignty) are not discussed in this paper. It is not argued that the SBG approach is in theory the best option; rather that it is an attractive “second best” approach that can be accepted by both sides.

In the SBG approach the two parties stop arguing about which side has political sovereignty and instead they focus on an administrative framework. They are facilitated in doing this because they both agree that ultimate sovereignty belongs to God. There are two forms of the SBG option:

1. Strong SBG: The two sides affirm that in light of their agreement that sovereignty belongs to God, claims of political sovereignty are overridden.

2. Weak SBG: The two sides affirm that sovereignty belongs to God, and that because of the unique historic and religious significance of these areas, it would be inappropriate and unfruitful to insist that the other side accept one's own claim to political sovereignty. Thus, they agree to place their disagreement on political sovereignty in abeyance. (They agree to disagree in silence.)

Both approaches have the virtue of not requiring recognition of any form of political sovereignty by the other side. Strong SBG has the attraction of removing a disagreement;

both sides withdraw their conflicting claims to political sovereignty. Weak SBG, on the other hand, is directed at making it possible to live with a disagreement. Weak SBG has the advantage of being more likely to be acceptable because it does not require withdrawing one's own claim to political sovereignty. The focus below will be on weak SBG; most of the points apply to strong SBG as well.

3. The Contributions of SBG

Weak SBG is intended to make "agreeing to disagree" a feasible option. It does this by introducing a new symbolism on which the parties do agree (God's sovereignty) that makes it possible to treat administrative issues as merely administrative, rather than as part of a struggle for de facto political sovereignty.

Without some mechanism for deflating the symbolic importance of administrative issues, each matter, each controversy takes on overwhelming importance as both parties struggle to establish de facto sovereignty. Without some symbolic deflation merely "agreeing to disagree" is a recipe for repeated incidents and struggles, possibly for a Jerusalem-centered conflict. Essentially, SBG gives "agreeing to disagree" a fighting chance, by encompassing it within a wider, shared, symbolic framework that allows the issue of political sovereignty to recede into the background.

4. Administration Under SBG

With or without SBG, the parties will need to agree on a framework for administration. An administrative agreement is required because of the complex issues such as access, excavation, security powers and responsibilities. This need to address administrative issues is not unique to SBG and is not necessarily more complex under SBG than it would be even if a straight-forward designation of political sovereignty were possible. What follows are suggestions for how several administrative matters might be dealt with under SBG. Other administrative options are possible, and the SBG approach does not rise or fall with the acceptability of these suggested arrangements.

a) Access to the Plateau

Access to the Plateau (but not the Mosques) would be guaranteed to any individual unless there is a reasonable expectation of either improper behavior or behavior that would generate a threat to public safety.

With respect to implementation of this principle, it would be desirable to have Israel charged with the primary responsibility of restricting access to Israelis and for Palestine to have the central responsibility for denying access to Palestinians. This is particularly important because giving the other side the authority to restrict the access of one's own nationals suggests a loss of sovereignty; thus, for

instance, the practice of the Israeli government restricting access to the Temple Mount Faithful should continue.

The problem arises however with respect to the failure of one side to restrict access to persons the other side judges to fall within the criteria meriting restriction. Here a decision should be made by a third party. Presumably the overall treaty will include provisions for binding arbitration of disputes, but whether there is an overall arbitration structure or not, one will be needed for Temple Mount/Haram al Sharif issues. This might involve an international commission (e.g. three jurists representing the U.S., Egypt and Sweden), or the UN Security Council, or some other arbitration body.

b) Impermissible behaviors

Day to day administration and non-controversial matters presently handled by the Wakf such as dress codes, would remain under Wakf authority. The particularly delicate issue is Jewish prayer. Even though only the tiniest fringe actually seeks to pray on the Mount, any formal prohibition on Jewish prayer would make it very difficult for Israel to accept the proposal. On the other hand, Israel itself presently prevents Israelis from going onto the Mount if it believes they will undertake anything but silent prayer. This is done on grounds of public safety. It would be best to try to finesse this issue, with both sides agreeing to “uphold the status quo” with respect to behaviors that constitute a threat to public safety.

Here as above, disagreement over whether a particular person represented a threat to public safety would be referred to the Commission.

c) Police function

This is the central problematic area. And it is here that we need a departure from current practice in which Israel reserves for itself the right to send police and troops onto the Mount, either for preventative or restorative measures. Though it is not the only approach, it might be best to have the Palestinian state given full police responsibilities and authority. Here it would be particularly important to specify the obligations that go along with this responsibility. This would contain some very strict obligations to prevent any threat to the safety of the Jewish worshippers down below. Secondly the police function would carry an obligation to protect the safety of any individual who was given access.

The treaty could provide that in arbitrating failures to fulfill such obligations, the arbitration commission could transfer police functions for a specified period, possibly to a third party, such as the UNSC or perhaps place them under the Arbitration Commission itself.

d). Construction and Excavation: Here principles would be determined, and both sides would be given a veto over proposed projects, with appeals being possible to the Commission.

5. The Unique Acceptability of SBG

Of crucial importance in evaluating the merits of the SBG approach is that it resonates extremely powerfully with the Palestinian public, especially among those who are most religious. The powerful response of the Palestinian public to this approach is of important significance for Israelis. It speaks directly to their overriding concern: will a peace agreement in fact bring lasting peace?

a. Palestinians: Among Palestinians (see NJ) when asked their view of this approach to the holy sites in Jerusalem, 64% indicated their support. This rose to 77% among those identifying with Islamic fundamentalist parties, and to 88% among the very religious. This is a level of support far beyond that of other options and suggests that the notion of God's sovereignty resonates deeply within the culture.

b. Israeli Jews: New polling data (June 2005) indicates that Israeli Jews are also prepared to accept a SBG approach. First they were asked about a proposal under which Palestinians would have sovereignty over the Temple Mount and Israel would have sovereignty over the Western Wall. This was thoroughly rejected, with 35.7% willing to accept the idea, and 53.8% opposed (43.2% strongly opposed).

Then they were asked about an approach in which both sides agree that sovereignty over the Temple Mount belongs to God and determine practical arrangements for administration, with Israel retaining sovereignty over the Wall. This was supported by 54.9% with 33.1% opposed.

It is to be expected that these numbers would be still higher within a context in which a) the proposal had government support, b) the proposal was part of a negotiated package which was understood to resolve all the issues to the conflict, c) it was widely recognized that the Palestinians would not accept exclusive Israeli sovereignty.

Furthermore the fact of solid Palestinian support can be used to give credibility to the claim that this is an approach to peace that will be more than a piece of paper, that it will last through the generations. This in turn is the most important factor in disposing Israeli Jews to compromise on Jerusalem.

6. Wider Islamic Support

Because this approach resonates so powerfully among the most religious Muslims, it is likely to garner wide support throughout the Islamic world. With Jerusalem as the most potent symbol of the conflict, an approach to Jerusalem that is received enthusiastically throughout the region is invaluable. It will set the tone for the general

acceptance of a new era of peace. This potential and any early response reflecting it will, in turn, build support for the entire peace agreement within Israel.

7. Future of Fundamentalisms/ Jewish-Islamic perceptions of the Other

A solution to Jerusalem that has at its center the symbolism of a common God, for Jews, Christians and Muslims, points religious consciousness in the right direction. Within each of the traditions there is sufficient complexity to allow partisans of discord as well as partisans of concord to draw on religious tradition to advance their orientation.

Agreeing that sovereignty belongs to God carries the implicit message that the three faiths share the same God. It helps to underline the Koranic perspective that the God that spoke to Mohammed is the same God that spoke to the Hebrew prophets; indeed, that Islam views the Hebrew prophets as their prophets as well.

Similarly, the SBG approach lends itself to remembering that in the Torah Abraham has a strong bond with his first son, Ishmael, and that God covenants with Hager (Ishmael's Egyptian mother) that from Ishmael will also come a great nation. Indeed, the Torah passage within which Isaac and Ishmael come together to jointly bury Abraham can itself be seen as symbolic of the decision to jointly administer the Old City.

8. Other Considerations:

a) Within the Arab/Islamic world much of the unique force of the SBG approach comes from the fact that in Arabic it affirms that sovereignty belongs to "Allah." For this reason, it is important to actually use the phrase "sovereignty belongs to God" rather than to refer more vaguely to "spiritual sovereignty" or "divine sovereignty."

b) It may be argued, that since sovereignty belongs to God with respect to the entire world, how can the negotiators pick out one little spot and say that sovereignty belongs to God in that area. The answer to this is that the negotiators will not be saying that this is the only area in which sovereignty belongs to God; rather they will be saying something of the following sort:

"Because the Temple Mount/Haram al-Sharif belongs to the spiritual heritage of both Judaism and Islam,

"Because the State of Israel and the State of Palestine are in fundamental disagreement with respect to claims of political sovereignty over the Temple Mount/Haram al-Sharif,

"Because the Abrahamic faiths all believe in the same God, and

"Because it would be inappropriate and unfruitful for either side to continue to demand that the its claim to political sovereignty be accepted by the other side,

“The two sides have agreed to affirm that ultimate sovereignty belongs to God,
and

“Further agree to place in abeyance their claims to political sovereignty and to enter into a treaty governing the Administration of the Temple Mount/Haram al-Sharif.”

Summary: The SBG approach not only is a viable solution to one of the most difficult problems of the negotiations, it offers unique strengths that can lend support to the entire peace endeavor.