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THE ISRAELI-PALESTINIAN CONFLICT IN INTERNATIONAL LAW

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THE ISRAELI-PALESTINIAN CONFLICT IN INTERNATIONAL LAW

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THE ISRAELI-PALESTINIAN CONFLICT IN INTERNATIONAL LAW

Elon Jarden

Introduction: International Law as the Key to Peace

In the Western states as in Israel, there exists an inner need to act according to moral principles, or at least to be convinced that one is acting according to them. Under certain circumstances where we have to negotiate with an opponent, we feel compelled to see him as more moral than he really is, so as to justify the negotiations with him from a moral standpoint. This attitude, which is characteristic of most of the public in the Western societies, is rife with dangers in Middle Eastern politics, which is based on power and not on moral principles. Thus, any discussion of the subject of the Middle East must begin from the standpoint of a number of its basic assumptions; otherwise we are likely to be deceived, seduced by rhetoric that states one thing while meaning the opposite.

Ostensibly, as members of the United Nations, the Arab states are supposed to act in adherence to their obligations under the Charter; in reality, however, nothing contravenes their conceptions more than the principles of this organization. The Arab states, despite being members of the UN, negate the existence of international law, and not only in regard to Israel, but even in inter-Arab relations. Even though international law and its institutions provided the basis for the establishment of the Arab states, the Arabs have never recognized them because they stand in opposition to the Islamic conception of law.

International law, like constitutional law, is a European invention, for which no parallels exist in the non-European world. It is based on the idea of freedom: just as constitutional law recognizes the individual's right to freedom, international law recognizes the rights of the various peoples to political independence, to "self-determination", which is subject only to international law. The European conception of law is pluralist, and the recognition of the legitimacy of the existence of many states, side by side in a given region, is derived from it. This conception took shape within the unique circumstances of European history, and to a certain extent even contravened the monistic ideal of a united Christian community.[1]

Islamic law is, conversely, monistic in essence, and only recognizes the legitimacy of a single all-embracing state – the caliphate – that is based on a single all-embracing religion – Islam. The caliphate is ruled by a single sovereign – the caliph – who is the leader of the Muslim community by right and by law. International relations, according to this conception, are not relations of equality, but of subjugation between the caliphate and all other entities, to which a certain degree of autonomy is permitted, but not sovereignty. Since Islam is universal in nature, there is no limit, at least in principle, to its extension. Such universalism is, however, the opposite of modern universalism, which is based on the notion of a network of sovereign states – large, medium-size, and small – that maintain relations on a basis of equality and not of subjugation.

The Islamic jurists, who were deeply influenced by the events and ideas that prevailed during the early stage of the crystallization of Islam, remained attached to the unique and universal conception of the sovereignty of the caliph, even after it no longer accorded with reality. That is why they had no part in Christianity's experimental probings toward international law during the Middle Ages. There was but one caliph; the question of relations between Muslim states did not arise at all, at least on the level of principle. And when it did arise, the jurists ignored it, or dealt with it in casuistic terms – under cover of the negotiations that the caliph held with a powerful insurgent. Relations with states that were not Muslim at all were not considered on the legal plane but only on the military plane: such relations were regarded as perpetual warfare between the believers and the infidels – *jihad* – that is interrupted by brief cease-fires.[2]

Because of the lack of legitimacy in Islam for political pluralism, the Arabic language did not even develop concepts equivalent to those of "nation" and "nation-state" (names were not even given to particular areas of land), which form the basis of international law. The Arabs regarded themselves first and foremost as Muslims, even when hegemony over the Muslim world passed from a dynasty whose ethnic composition was Arab to a dynasty that was non-Arab. Hence under the Ottoman Sultan, the Arabs did not have a feeling of being conquered, even though the Ottoman dynasty was, ethnically speaking, Turkish and not Arab. The sub-Islamic Arab nationality began to crystallize only in the 19th century – as the Ottoman Empire began to come apart and the Western powers started to penetrate the Middle East. Even this, however, was at first a pan-Arab nationalism, as

opposed to territorial nationalism. Self-determination in territorial terms, involving an attachment to a particular area of land, did not develop until after the First World War, as the Ottoman Empire collapsed and was divided up into separate administrative units under the Mandatory rule of Britain and France. That is why the Arab states are called by names that were given to them by the Western powers and not by their own names. Jordan, Syria, Lebanon, Iraq, and so on – all these are names that were imposed on the Arabs by foreign actors, which is also why these territories are thought of as kingdoms. Thus even today, after more than fifty years of political independence, the Arabs have trouble defining themselves in terms of bounded territorial nationalism, and prefer to think of themselves as part of the "great Arab nation" and even as part of the still greater Islamic nation. The Arab collective consciousness is not monolithic, but rather tripartite, in the descending order of: religious, linguistic, and territorial. This divided personality is manifested par excellence in the Palestinian Covenant.[3]

The Prohibition of War in International Law

The difference in legal-political conceptions is manifested not only in the disparities between pluralism and monism, but even in the definition of the relations between peace and war. The criminalization of war in international law, by the UN Charter, is foreign to Arab understanding because it contradicts basic conceptions of Islamic law, first and foremost the institution of jihad. Jihad is not merely "just war" in the European sense of the concept, but indeed a religious commandment of the first order. For as long as the doctrine of "just war" prevailed in international law, the disparity between the different legal systems was not so great. But once war came to be completely prohibited by international law – with exceptions for self-defense and collective security – a disparity was created that could no longer be bridged. A brief review of the history of the criminalization of war in international law, and the repercussions this has for the texture of international relations, will shed light on this matter.

The declaration of war as illegal – "criminalization" in legal terminology – by international law was done, for the first time in history, in the UN Charter. Subsequently some additional documents were signed that, together with the UN Charter, turned war into an international crime against peace and stipulated severe sanctions for its perpetrators, part punitive and part financial. The prohibition of war is the cornerstone of today's international law, whose constitution is the UN Charter.

With its criminalization of war, the Charter put an end to the older international law, in which war was legal as long as its purpose was "just". The doctrine of "just war", which began in Roman law and evolved into the modern world by means of Christian theology and the canonical law of the Middle Ages, permitted war in practice as long as each side had a moral justification for its actions. Since justice is indeed immeasurable and no single, recognized and accepted list of such just purposes existed, each legalist determined his own list for himself, and sometimes these lists had a political or religious coloring. These lists contained mostly amorphous purposes, leaving plenty of room for maneuver, especially since no international authority existed that could determine what did and did not justify war.[4]

In the legal regime that the Charter has established, there is no longer any validity to the traditional distinction between a "just" war and an "unjust" war – instead, only a distinction between an "aggressive war", which is prohibited by law, and a "defensive war", which is permitted by it. No purpose any longer justifies the use of force, no matter what the circumstances. In cases of disagreements and clashing interests in international relations, only the law can arbitrate, not force. The use of force is legal only insofar as it is directed against an act of aggression, whether by the party that is attacked (defensive war) or by the Security Council, which is authorized to act against an aggressor (collective security). This distinction is reflected in the stipulations of the Charter, in the general prohibition of the use of force or even the threat of it (Article 4[2]) – and, on the other hand, in the recognition of the right to self-defense (Article 51) and in the authorization to enforce collective security (Chapter 7).[5]

The Charter's total prohibition of war – with exceptions for self-defense and collective security – marks a revolutionary shift in international life. This is, without doubt, the most daring reform in human history with its aim of enforcing the rule of law in international relations, and its elimination of force as the sole arbitrator in these relations. What had been a prophetic vision of the End of Days – "Nation shall not lift sword against nation, and they shall learn war no more" – has become, thanks to the UN Charter and its institutions, the legal regime of the nations of the world. International criminal law imposes obligations on the members of the UN in their relations with each other, much as criminal law imposes obligations on persons, as individuals and as groups, on the domestic political plane.

The Muslim Arab world has not succeeded in internalizing the revolution that the UN Charter has wrought, just as it has difficulty internalizing constitutional law and other Western norms. Hence, despite the fact that the Arab states owe their independence to international law, it is difficult for them to adopt its principles, especially the more powerful states among them. That explains why the Arab states fail to recognize not only Israel's legitimacy but even that of other Arab states; why the strong states among them seek to conquer the weak ones, with the goal of reestablishing the vanished caliphate; why even the many peace agreements that have been signed among them are not worth the ink with which they were written. In addition, that is why, despite the fact that in all of these states the same language is spoken (at least in the Arab states), despite the "normalization" that exists among these states and includes embassies, trade, cultural interaction, and so on – items that the Arab states promise to deliver to Israel in return for its withdrawal to the 1967 borders – a mad arms race is still being waged in the Middle East.

Thus, in the Middle East the recognition of the legitimacy of international law is a precondition for the recognition not only of Israel's legitimacy but even of that of the Arab states, which arose on the basis of this very international law. And so long as that precondition is not fulfilled, this region will continue to be the domain of a "war of all against all", in Hobbes's formulation. From the Arabs' standpoint, the war against Israel is not only legitimate but indeed a religious commandment. In inter-Arab relations the situation is, of course, more complicated legally, since within the "Muslim House of Peace" (a translation of the Arabic term *Dar al-Islam*), according to Islam's own definition, peace is supposed to prevail. This peace, however, depends on the hegemony of a particular actor, the inheritor of the caliphate – which does not exist in actuality.

In the absence of international law there are, indeed, restraints on the outbreak of active war, but they reflect only the balance of power. The fear of war is sufficiently strong to make the sides abstain from it, but not strong enough to motivate them to create institutions for conflict resolution. To the extent that it is at all possible to call this state of affairs "peace", it is peace in the traditional sense: armed peace, based on various bilateral, fortuitous, fragile arrangements. Armed, minimal peace cannot be maintained except by a balance of power between adversaries – or by the victory of the stronger party and the establishment of an imperial peace of the *pax Romana* type.

Such imperial peace existed in the Middle East for five hundred years under the Ottoman hegemony, or *pax Ottomana*. This peace fell apart as the Ottoman Empire collapsed under the weight of British-French imperialism. The *pax Britannica* in the Middle East prevailed for only one generation, during the 1920s and 1930s, and fell apart with the travails of Britain and France in the Second World War.

The last imperial peace in the Middle East turned into a peace of the balance of power among the new states, which were established in the Middle East after the Second World War. Being preoccupied with the war against Israel, the Arab states succeeded in moderating the war among themselves and even in concealing it from the probing eyes of the world media. The inter-Arab conflicts, which claimed hundreds of thousands of victims, were hidden behind the curtain of Arab propaganda for a generation. Only when the conflict with Israel lost steam in the 1980s did the world discover the rim of the volcano in the Middle East. If the world had some understanding of the war between Iran and Iraq – a continuation of the historical conflict between the western part of the Middle East and the eastern part, between Sunni-Arab Islam and Shi'ite-Persian Islam – then the conquest of Kuwait by Iraq would not have been incomprehensible to all. How was it possible that the Iraqi wolf would swallow whole the Kuwaiti sheep, in the Middle Eastern Garden of Eden over which only the Arab-Israeli conflict cast a pall? If the Israelis and the Arabs would only arrive at a settlement, it was widely asserted, the Middle East would again become a Garden of Eden. What Saddam Hussein did in the public eye, in the proximity of the world's oil wells, Assad did in quiet and obscurity in the Land of the Cedars. He swallowed Lebanon whole, as if not only international law, but even the basic morality of the Islamic "House of Peace" did not exist in the Middle East.

In contrast to what is commonly thought, it is precisely Israel's presence in the Middle East that prevents it from turning into a much worse hell than it already is. The Israeli presence has given it at least a partial stability by directing the Arabs' political energy from the Muslim House of Peace outward, to the "House of War" (a translation of the Arabic term *Dar al-Harb*), which has been "invaded by the infidel Zionist entity". In the hot war that has been waged in the Middle East between the Muslim House of Peace and the Israeli House of War, there have been far fewer innocent victims than in the cold peace that has prevailed for a generation within the

Muslim House of Peace (which occasionally turns into a hot war, such as the Iraq-Iran or Iraq-Kuwait war).

The Middle East in an International Perspective

The lack of peace between Israel and the Arab states does not stem, therefore, from the existence of conflicts between the sides, but from the Arab states' refusal to recognize the legal regime that international law has established, since it runs counter to Muslim law. Hence their war against Israel is also perceived as normative, even if it contradicts their obligations according to the UN Charter. That is also why they ascribe no importance to the series of agreements they have signed with Israel since its establishment.

With the conclusion of the Israeli War for Independence, armistice agreements were signed between Israel and Egypt, Jordan, Syria, and Lebanon, with the goal of "facilitating the transition from the present truce to a permanent peace in Palestine" as stated in the preamble to these agreements. Thus in regard to all of these states, it was also determined that "the injunction of the Security Council against resort to military force...shall henceforth be scrupulously respected by both Parties", and that "no aggressive action by the armed forces...of either Party shall be undertaken, planned, or threatened against the people or the armed forces of the other." On the Israeli side the cease-fire agreements were taken at face value, the common assumption being that they would be followed by peace treaties, which would in turn give rise to a new Middle East. Thus, Israel's representatives in the UN repeatedly averred that Israel was no longer in a state of war with the Arab states. This was also the position of the Security Council, and even of courts of law in Israel.[6]

Nevertheless, the Arab states again declared that, notwithstanding the armistice agreements, they were in a state of war with Israel and it was permissible for them to continue fighting it.[7] The ink on these agreements had hardly dried before Arab states, the first being Egypt and Syria, initiated a series of hostile actions against Israel. In the mid-1960s they escalated these hostile actions, leading ultimately to the Six Day War, and later to the War of Attrition and the Yom Kippur War.

In the perspective of international law, the ongoing threat to Israel's existence by the Arab states is manifestly illegal. The state of Israel was established legally, on the basis of General Assembly and League of Nations resolutions, and of the principles of international law – hence its right to

exist, irrespective of the Arabs' willingness to recognize it. Israel has been forced to struggle for its existence because since the time of its establishment, the UN has lacked the capacity to enforce international law, mainly as a result of the Cold War which emerged parallel to Israel's establishment. From a legal standpoint, the Arabs' use of force in their efforts to destroy Israel is a gross violation of international law, and indeed a testimony to its impotence throughout this entire period.

There is perhaps no greater disparity than that between the Arabs' attitude toward international law and that of Israel – and before its establishment, that of political Zionism. Zionism was the only political movement of the 20th century that tried to base its existence not on the use of force but on the principles of international law. For thousands of years the Jewish people lived outside of political history, and hence were able to eschew the use of force. Their historical consciousness still contained great, glorious war heroes from the days of the First Temple, but these were vague memories, intangible. In his daily life the Jew was a merchant and a spiritualist. Although the Zionist revolution changed this situation almost overnight, it did not succeed in uprooting what had been sown and cultivated over thousands of years: the recognition of the supremacy of spiritual and moral values over force, as stated in Zecharia (4:6), "Not by might and not by force but by spirit." Even the 20th century, rife with violence, in which the blood of six million Jews was allowed to vanish into the maws of institutionalized mass murder, did not succeed in uprooting this glorious heritage. In this perspective, the Jewish people is a paragon and a model of "the end of history", while the world surrounding it is still living the history of force in all its fierceness.

It was by creating the state of Israel that the Zionist revolution changed this situation almost overnight, the whole purpose of the state's existence being to erect a dam against the murderous modern-day violence. For this achievement Zionism exacted an enormous price, transforming the Jews, reluctantly and against their nature, into something like participants in the international power game. The Jews' national revival confronted them with an almost irresolvable dilemma: how to preserve their lives by all means without losing their souls. Israel's resort to force in order to secure its establishment was nothing but a legitimate defensive war, in the face of the impotence of international law.

Right Cannot Grow from Injustice

If we are to consider the future of relations between the state of Israel and its Palestinian minority in light of the principles of international law, we must bear in mind that only the Israeli side comes to this discussion with integrity and clean hands, whereas the Palestinian side not only has blood-stained hands, but even an unclean heart. The Palestinian side has set forth its claims in the United Nations only after the frustration of its hope of drowning Israel in blood. Time and again it rose up to destroy Israel, with the aid of the Arab states, and only when it became clear that it could not do so by force did it begin seeking to shrink Israel down by means of international law. All that I shall say from here on has only one purpose: to persuade the reader that the UN organization – as well as the United States and the rest of the nations of the world – must not award a prize to the aggressor, since they will thereby destroy international law, whose whole basis is the time-honored *ex injuria jus non oritur* – "Right cannot grow from injustice," or, "The sinner must not be rewarded."

Political Zionism saw morality as an end in itself and not just as a means for attaining its goals. The national liberation of the Jewish people came to be associated with universal liberation. The return to Zion was perceived as part of a process of re-creating all of human civilization in the spirit of the prophets of Israel – "that Torah shall go forth from Zion and the word of God from Jerusalem". The goal of Zionism was, as Harold Fisch puts it, "to redeem history by means of justice – justice in society and justice in political life".[8] This was aptly expressed by David Ben-Gurion:

> I am convinced that the survival of the Jews is a result of their perpetual and total awareness over hundreds of years of "something", which I am not able to name, but perhaps, in a seemingly archaic formulation – a vision of the messianic redemption, on the national and human level...thus what I refer to is their redemption, with their return to the status of an independent nation in its independent land, where they will be morally renewed and become a precious people, and thus also in regard to the redemption of all humanity, with the victory of peace, justice, and equality in the world, after the elimination of tyranny and wickedness. This double focus of the messianic vision passes like a crimson thread through the entire history of the Jewish people and the Jewish faith. This is the religious, moral, and national consciousness of the Hebrew nation.[9]

Political Zionism was always moderate and cautious. A pragmatism of maximal morality and law, and minimal force, is what characterized political Zionism before the establishment of the state – and, afterward, Israeli foreign policy as well, creating continuity despite the political vicissitudes. What this policy asserted was, more or less that, since Zionism received a writ of authorization for its activity – from the League of Nations, from the Palestine Mandate – it does not need to await a further writ of authorization from the Arabs, and is already authorized to build its endeavor in Israel. And yet, everything needs to be done with great caution so as not to anger the nations of the world more than is necessary. Israel must strive, to play it safe; to have the superpowers on its side; to create facts and to seek legitimacy for the existence of these facts; to achieve legitimacy – but not to be complacent about it, instead hastening to translate it into the language of facts in the field; not to await the Arabs' blessing – but also not to give up any chance for compromise and dialogue. The Palestinians, in comparison, not only rejected any compromise out of hand, but did not even recognize any other path than the use of force. Their nationalism was not only based on force but actually spurious, a sort of parody of Jewish nationalism. Palestinian nationalism was invented as a sort of antithesis to political Zionism. To balance the Zionist myth, the anti-Zionist myth of the Palestinian liberation movement was devised. The Palestinian-Arab anti-nation is a sort of photographic negative of Zionism. Whereas Zionism was created so as to give political expression to the Jewish people's vision of national and universal redemption, the Palestinian-Arab nation arose only to prevent Israel's establishment by all available means; and after it was established – to bring about its annihilation. Its aim is not to build but only to destroy.[10]

The Oslo Agreements in Light of International Law

The relationship between the State of Israel and the Palestinians is today dominated by the Oslo agreements. In the context of these agreements, two questions arise: (1) To what extent, if any, are they valid from the standpoint of international law? (2) Do the Palestinians have a right to a sovereign state in part of Palestine according to international law? My answers to these questions are as follows:

1. The Oslo agreements are not valid for two main reasons: (a) They were arrived at in a context of the use of force and/or a threat of the use of force, both of which are prohibited by Article 52 of the Vienna

Convention on the Law of Treaties. (b) They are based on an erroneous formulation, from a legal standpoint, of UN Resolution 242 in regard to "territory for peace".

2. Because, according to international law, the state of Israel is the legal sovereign over the entire territory of Mandatory Palestine west of the Jordan River, the Palestinians have no right except to autonomy, with the extent of its authority to be determined in negotiations between the state of Israel and the Palestinian Authority.

The criminalization of the use of force, and even of the threat of it, by the UN Charter has brought a profound change not only in concepts of "war" and "peace" but also in the concepts derived from them, the most important of which is that of "peace treaty". In an analogy with domestic law one may say that from the moment that war was prohibited by law, there was no need to formalize this with bilateral agreements, since a law and a treaty are alternative legal arrangements. In a competition between a law and a treaty, the former prevails – except in the case of a particular behavior that the law provisionally permits. Since, however, one may by no means make provisional laws that are of a criminal nature, under no circumstances can an agreed arrangement serve as a substitute for such laws. In the past, bilateral agreements to terminate a war took different forms and were called by different names, according to their nature: "truce", "cease-fire", "armistice", and "peace treaty". These arrangements, including peace treaties, were of a fortuitous character, and fell apart as soon as the next war broke out. As Franklin Roosevelt put it, "peace should be regarded not as an end to the last war, but as an end to the beginning of the next one."[11]

Thus, the various distinctions between the different arrangements were important only so long as war was legal. But from the moment that war was prohibited by law, there was, to repeat, no longer any need for treaty arrangements. That is why, in fact, the use of peace treaties has decreased since the end of World War II. Indeed, World War II itself already deviated from the norm of peace treaties insofar as the German nation, the main defeated power, has not made a peace treaty to this day.[12]

Furthermore, in light of the sweeping prohibition of the use of force or even the threat of it, the traditional peace arrangements for bringing an end to war, including peace treaties, are no longer of an validity because they result from the prior use of force. So long as war was considered legal in

international relations, international law could not regard it as a factor that nullified the validity of agreements. Hence peace treaties were always considered valid, even though in actuality they were imposed, at the end of wars, by the victorious states on the defeated ones (hence they were popularly referred to as "pacts of surrender"). But with the prohibition and even criminalization of war in international law – subject to exceptions of self-defense and collective security – a perception crystallized within legal theory that a treaty that an aggressive (i.e., criminal) state imposes on a defeated (i.e., the victim of the crime) state at the end of a war (or, without a war, by threatening that state) could have no authoritative validity. The legal rationale behind this principle is that the aggressor must not enjoy the fruits of his aggression – to repeat the ancient Latin legal terminology: *ex injuria jus non oritur*, "Right cannot grow from injustice", or "The sinner must not be rewarded." This theory received authoritative legal validity with the entry into force of the Vienna Convention on the Law of Treaties (hereinafter Law of Treaties) of May 23, 1969, Article 52 of which states that: "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."[13]

This conclusion, according to which, under the legal regime established by the UN Charter, peace treaties are not only superfluous but even illegal because they result from the prior use of force, has far-reaching implications for the concept of peace in the Middle East. If we add the fact that, according to Article 103 of the Charter, bilateral agreements can do no more than supplement what is stated in the Charter, we arrive at a revolutionary result that could change the Middle East peace process entirely. In essence, according to the new legal situation there is a place for bilateral agreements only insofar as they formalize positive relations between the different states (diplomatic, trade, cultural, and other relations) – but not in regard to the prohibition of the use of force (except for security arrangements) and not, indeed, in regard to territorial arrangements (except for minor border adjustments).

The invalidation of peace agreements that are signed as a result of the use and/or threat of force has implications, first and foremost, for Israel's relations with Syria, Lebanon, and indeed the rest of the Arab states. In addition, it also has significance for Israel's relationship with the Palestinian Authority. Although the Palestinian Authority's status in international law is

indeed not clear, for purposes of general legal analysis one may relate to it as an entity with a political status that is less than a state, yet carrying rights and obligations on the international plane.[14]

The Oslo agreements are invalid because they were obtained as a result of the ongoing use of terrorism over many years, in Israel and outside of it, as well as the popular disturbances known by the name "intifada". Furthermore, these agreements are invalid because, according to the language of the Palestinian Covenant and other basic documents, the Palestinians have not relinquished the use of armed force as a means of destroying the state of Israel even subsequent to the signing of the Oslo agreements. It is worth noting that a treaty that was obtained as a result of the use and/or threat of force is "null and void", so that there is no need for a further action to bring about its nullification.[15]

The Oslo Agreements are indeed invalid insofar as they are based on Resolution 242, with respect to the formulation "territories for peace", which is a political resolution that not only lacks authoritative legal validity but is even fundamentally erroneous in that it violates the time-honored principle of "Right cannot grow from injustice." The possibility of nullifying a treaty that was arrived at by error is anchored in Article 48 (1) of the Law of Treaties, which states that:

> A state may invoke an error in a treaty as invalidating its consent to be bound by the treaty if the error relates to a fact or situation which was assumed by that State to exist at the time when the treaty was concluded and formed an essential basis of its consent to be bound by the treaty.

Security Council Resolution 242 of November 1967 created the Gordian knot between peace and Israel's withdrawal to the 1967 borders, known by the phrase "territories for peace". This resolution has no basis in international law, and even contradicts it insofar as it is an illegal abridgement of the right to peace. Thus, according to the UN Charter, the right to peace which is conferred by the fact of membership in the UN, is absolute, and cannot be made dependent on any additional conditions. Like most Security Council resolutions, this resolution is political and not legal. Likewise it is not an authoritative resolution but only a recommendation, since it was taken in the framework of Chapter 6 of the Charter and not of Chapter 7, which alone can impose enforceable obligations.[16]

Resolution 242 was a political compromise, an outcome of the Cold War, between the Arab states' demand to return Israel unconditionally to the 1967 borders, which was supported by the Soviet Union, and Israel's demand to establish full peace with all of the Arab states, which was supported by the United States. The Arabs rejected it completely because it required them to recognize Israel's right to live within secure and recognized borders, and even required them to establish a just and lasting peace with Israel involving the "Termination of all claims or states of belligerency". Israel was prepared to accept the resolution as long as it did not require it to withdraw from all of the territories that were taken in the war, but only from part of them. The Israeli interpretation is supported by the interpretations of American politicians who took part in the resolution's formulation. The latter confirm that the United States decided not to veto the resolution only because it had been formulated to make clear to all that it did not call for a full Israeli withdrawal to the 1967 borders, but only to secure and recognized borders as outlined by Pentagon experts.[17]

Resolution 242, as noted, is fundamentally erroneous because it makes a unique linkage. The right to peace is absolute and is not conditional on anything. Thus to conjoin it with Israeli withdrawal to the 1967 borders is not only erroneous but indeed unjust, insofar as a prize is given to the aggressor. The moment the right to peace is associated with any condition, those who reject peace gain a bargaining chip, as the Arab-Israeli conflict has demonstrated. In the legal regime that the UN Charter established, no state has the right to reject peace, and any party that rejects peace is the same as a transgressor on the domestic criminal plane. Thus, any discussion of peace in the Israeli-Arab context must be based on undoing the Gordian knot of "territories for peace".

Jordan Is Arab Palestine

The right to peace is thus the cornerstone of modern international law, whose constitution is the UN Charter. The right to peace is absolute and cannot be made conditional in any way. Therefore, Resolution 242, which makes Israel's right to peace conditional on the handing over of territories to the Arabs, has no legal validity. If, then, the Arabs wish to belong to the international community that the Charter has established, they must clearly declare that they repudiate war unconditionally and unequivocally. They must declare that they recognize Israel's right to exist in secure and recognized borders, without making this conditional on the handing over of

any territories. And if the Arabs refuse to do so, they have clearly removed themselves from the fold of the international community, and are no longer entitled to any assistance that this community is authorized to provide.

The question of territorial rights must be examined separately. The difficulty of regulating territorial rights inheres in the fact that it is doubtful whether, since the criminalization of war, international law enables the acquisition of new territories at all. So long as war was legal, it was possible to acquire territories by means of it, and this was regulated by international law. However, from the moment that war was criminalized, there was no place for the acquisition of territories by means of it, and a territorial status quo was created.[18]

The UN Charter conferred legitimacy on the territorial status quo that prevailed at the time of its establishment, even if it had been achieved by the prior use of force, on the ground that the territorial integrity of states must be strictly maintained (Article 2(4) of the Charter). The Charter finalized the existing borders, subject to the important exception of "states in the making", which was established by the Mandatory regime of the League of Nations and was subsequently transferred to the UN's international trusteeship system. Under the force of this regime, all the new states of Asia and Africa were established, including the state of Israel, in the territories that had previously been assigned to the rule of the Western powers (the decolonization process). The Charter regulates the creation of new states in a general way, but does not provide solutions for the settlement of territorial conflicts between existing states, nor for the claims of an ethnic minority that was not recognized at the time by the UN.[19]

In the absence of a positive regulation on the acquisition of new territories, and taking into account the *de jure* recognition of the borders that existed before the establishment of the Charter – subject to the exception of decolonization – one may assert that there is no further possibility of acquiring new territories. This is particularly so given that territories may not be acquired as a result of the use of force, in light of the Charter's criminalization of war. That is, indeed, the basis of the preamble of Resolution 242, which asserts the "inadmissibility of the acquisition of territory by war". However, even though this statement is generally correct, it is not correct in the context of the Arab-Israeli conflict. In light of the UN Charter's fundamental distinction between aggression, which is prohibited, and defense, which is permitted, it may be concluded that the acquisition of

territory by means of a defensive war is legal, and supersedes the general principle of the territorial status quo as set forth above. This distinction is reinforced by the precedent of Germany, which does not contest its present borders even though they do not include territories that were in its possession on the eve of World War II. The legal rationale here is the recognition that Germany was the aggressor in that war, whereas Poland and Russia, which gained parts of its territory, were victims. There is support for this position in the legal literature; for instance, Prof. Yoram Dinstein has asserted:

> When a state, which was saved by self-defense, emerges victorious from a war, there is no wrong if as a result of its victory it gains part of the territory of the transgressing state; it is forbidden for the transgressor to enjoy the fruits of its crime, but there is nothing illegitimate in the victim of the crime benefiting...the famous Resolution No. 242, of November 1967, of the Security Council of the United Nations Organization, indeed speaks loftily in its Preamble of "the inadmissibility of the acquisition of territory by war", but this formulation (which has no authoritative legal validity) essentially confuses the legal status of the criminal and its victim.[20]

That the Six Day War was a defensive war is not disputed at all in the Israeli legal literature. It is also agreed that a defensive war gives the defending state rights to territories taken as a result of the war. The issue in dispute is how the act of acquisition may be consummated by combining the right to sovereignty with the right to possession in practice. According to Prof. Dinstein, the right to sovereignty can only be realized through the transfer of territory in a peace treaty, as was done in the past, so long as the government of the state that lost part of its territory continues to exist. Prof. Dinstein thus proposed attempting to reach a peace treaty with Jordan so that it would willingly transfer the territories of Judea and Samaria to Israel.[21]

Prof. Yehuda Tzvi Blum also believes that the proper way to transfer territorial rights between states is by a peace treaty. In his view, however, because of the special circumstances of Judea and Samaria, including the eastern part of Jerusalem, there is no need for a peace treaty to finalize the acquisition of these territories, since Jordan did not have legal rights to them at the time that they were taken as a result of an act of aggression, when such aggression had already been criminalized by international law. On the other hand, Israel was legally granted these territories, by a resolution of the

League of Nations, in order to establish in them a Jewish state in all parts of the Land of Israel. Thus, according to Prof. Blum, there is no need for any further act in order to realize Israel's sovereignty over the territories of Mandatory Palestine. The right to sovereignty is antecedent, in this case, to the right to possession, so that once possession was gained, the acquisition of these territories was complete.[22]

In my opinion, Prof. Blum is correct asserting that there is no need for any further act in order to combine the right to sovereignty with the right to possession, since the right to sovereignty precedes the right to possession. I disagree only insofar as he concurs with Prof. Dinstein that today the proper way to transfer territories is by peace treaties – since peace treaties, in the era of the criminalization of the use of force, are no longer valid, at least insofar as the transfer of territories in such treaties is concerned, as explained above.[23]

The Palestinians' claim that they have a right to establish a sovereign state in the territories of Judea, Samaria, and Gaza rest on two legs: (1) UN Assembly Resolution 181, concerning the partition of the western Land of Israel and the establishment of an Arab state alongside a Jewish state; and (2) Resolution 242, concerning Israel's withdrawal to the 1967 borders. This claim can be dismissed outright, without considering it in detail, on the ground that the Palestinians themselves rejected these resolutions at the time, and did all they could to foil them by force. As noted earlier, the Palestinians presented their claims to the UN only after their hopes of physically destroying Israel with the help of the Arab states had been disappointed. It is only to be on the safe side that I shall now examine the Palestinians' claim in detail, and seek to demonstrate that it has no substance, its only purpose being to squeeze Israel into the 1967 borders and subsequently into the 1947 partition borders, as stages on the path to Israel's final destruction when the time is ripe.

I pointed out earlier that Zionism was the only 20th-century political movement that sought to base itself not on force but on international law. At its inception there was not, in fact, a consensus about the course that Zionism should take, with some arguing that it could be realized even without a legal basis, by means of the illegal infiltration of the Land of Israel. However, the mode that ultimately prevailed was that of rational Zionism, which maintained that the acquisition of legal rights, to be guaranteed by international commitments from the powers, was a precondition for any

Jewish settlement and for the establishment of a state in the Land of Israel. Thus, at the First Zionist Congress the objectives of Zionism already were defined in terms of international law, formulated as follows: "Zionism aspires to establish a homeland for the people of Israel in the Land of Israel, which will be guaranteed by public law."[24]

The first international recognition of political Zionism came in the framework of the Palestine Mandate of the League of Nations of July 24, 1922, which adopted the Balfour Declaration of November 2, 1917, in regard to the "establishment in Palestine of a national home for the Jewish people", and indeed recognized the "historical connection of the Jewish people with Palestine and...the grounds for reconstituting their national home in that country". Article 5 of the Mandate states that "The Mandatory shall be responsible for seeing that no Palestine territory shall be ceded or leased to, or in any way placed under the control of the Government of any foreign Power." It clearly emerges from the Mandate's wording that the intention of its drafters was to establish a Jewish state in the entire territory of Mandatory Palestine, otherwise there would have been no need for Article 5 above. On the other hand, the authors of the Mandate were well aware of the existence of non-Jewish residents in the Land of Israel, thus emphasizing: "it being clearly understood that nothing should be done which might prejudice the civil and religious rights of the existing non-Jewish communities in Palestine".[25]

From the standpoint of international law, the Palestine Mandate is the authoritative legal source in regard to rights of sovereignty over the Land of Israel. It is imperative to note that three years earlier the Balfour Declaration was sympathetically received not only by the Western powers but also by the person who saw himself as the leader of the Arabs, Amir Feisal. In the Feisal-Weizmann agreement of January 3, 1919, Feisal recognized the Jewish people's national aspirations and right to establish a Jewish state in the territory of the Land of Israel. The agreement speaks not only of vigorous cooperation in the development of the region, but also of Jewish immigration "on a wide scale" and the rapid settlement of the immigrants on the land in "dense settlement".[26] The Zionist enterprise won broad sympathy in the League of Nations almost up to the latter's demise, notwithstanding the fact that Iran was one of its founders and that during this period four additional Muslim states joined it one after the other – Turkey and Iraq (1932), Afghanistan (1934), and Egypt (1937). Only in September 1937 did

a radical change begin in these states' stance toward Zionism, against the background of the 1936 disturbances in Palestine.[27] Britain, too, showed sympathy for the Zionist enterprise up to 1939, when it suddenly shifted its posture as a result of growing Arab pressure.

Up to the mid-1930s, the establishment of an Arab state in the western part of Mandatory Palestine was in no way considered. On the contrary, the establishment of an Arab state in the territory east of the Jordan River, under the rule of Emir Abdullah, was intended to solve simultaneously the problem of the Palestinians. That Jordan was a Palestinian state was not questioned at all, except when the Palestinians in the western Land of Israel began to demand a state of their own. All partition plans that were proposed beginning with the Peel Commission of 1937 manifestly contradicted what was stated in Article 5 of the Palestine Mandate, which unequivocally rejected the establishment of an additional state in the Mandatory territory, especially since most of this territory had been awarded to Transjordan. Political Zionism accepted the partition plans, which dealt a harsh blow to the Jewish people's original rights in the Land of Israel, only out of awareness of the regional balance of power, which at that time favored the Arabs. Similarly, Zionism accepted Partition Resolution 181 of the UN General Assembly, of November 1947, only because there was no alternative, especially in light of the need to solve immediately the problem of the Holocaust survivors in Europe.

The Palestinians' right to a state in addition to the one across the Jordan (which received independence in 1946), as recognized in UN Resolution 181, was controversial in itself, since it was bestowed on the Palestinians in contradiction to the original Mandate of 1922, which the UN had undertaken to fulfill in Article 80 of its Charter.[28] However, the Palestinians, from the moment that they rejected Resolution 181 and chose to attack Israel, aided by Arab states, with the intent to destroy it, lost this right – on the basis of the general principle of "Right cannot grow from injustice," and "The sinner must not be rewarded."

While relying on the short memory of world public opinion, the Palestinians tend to forget the fact that in 1921 Mandatory Palestine was already partitioned in two, and in its eastern part what was called "the Emirate of Transjordan" was set up, which was designed not only to fulfill the commitments Britain had made to Emir Abdullah during the First World War but also to allocate land for the Palestine Arabs across the Jordan

River.[29] Likewise, the Palestinians tend to forget the fact that in 1949 Transjordan annexed the territories of Judea and Samaria, and even changed its name to "the Hashemite Kingdom of Jordan" so as to emphasize that both banks of the Jordan were now included in its territory. The Palestinians also tend to muddle the fact that, for twenty years after their right to a state was recognized in 1967, they did not see fit to do anything so as to realize it. On the contrary, from the time of the Kingdom of Jordan's annexation of the territories of Judea and Samaria, the Palestinian residents did not at all feel themselves to be occupied but rather as having been liberated by their country, which, indeed, immediately granted them Jordanian citizenship. The Palestinians not only regarded themselves as Jordanian citizens in every way but indeed played an active and dominant role in Palestinian life in Jordan, including at the level of members of Parliament and government ministers. Only after the Six Day War did the Palestinians of Judea and Samaria suddenly awaken and begin to demand the implementation of Resolutions 242 and 181.[30]

The Palestinians' claim that not only 181 but also Resolution 242 accords them rights is entirely baseless, since Resolution 242 is not only invalid in itself, as explained above, but in fact irrelevant to the Palestinian context. The Palestinians cannot rely on 242 because it has nothing to do with them. The adoption of Resolution 242 by the Oslo agreements is a fundamental error that this article seeks to correct. To begin with, the Oslo agreements ascribe authoritative legal validity to a resolution of a political nature, even though this contravenes international law. Second, they enlist an erroneous resolution in an erroneous context.

Resolution 242 pertains only to Israel's relations with Egypt, Jordan, and Syria, its direct adversaries in the Six Day War, and not to the Palestinians, who at that time had the status of an ethnic minority and/or refugees, but not of a state or even a "state in the making". At the time that Resolution 242 was enacted, no recognized Palestinian political entity existed, not even a "state in the making". This is borne out by the fact that the Resolution's wording makes no mention whatsoever of such a right. On the other hand, Resolution 242 calls for "achieving a just settlement of the refugee problem", together with the need for "guaranteeing the territorial inviolability and political independence of every state in the area". The Resolution's wording makes it clear that at the time there was no intention to support the establishment of a Palestinian state in western Palestine, but

rather to solve the problem of the refugees in a humanitarian fashion. That is why, of course, the Palestinians rejected Resolution 242, just as they rejected Resolution 181 earlier even though it was superior from their standpoint. The Oslo agreements are thus fundamentally invalid in being a product of the use of force, which is prohibited by Article 52 of the Law of Treaties, and indeed are worthy of nullification because they are erroneously based on Resolution 242, which is legally invalid and irrelevant to the Palestinian context.[31]

The Palestinians already have, thus, a state of their own – the Hashemite Kingdom of Jordan – where they in fact constitute the majority. This has been officially expressed in statements by government officials in Jordan – "Palestine is Jordan, Jordan is Palestine", as the Jordanian crown prince put it on February 2, 1970 – and even by top Palestinian leaders. According to international law, the Palestinians realized their right to self-determination with the establishment of the Kingdom of Jordan, and hence there is no basis to their claim of deprivation. Support for this position may be found in the statements of Prof. Julius Stone, an internationally known expert in the field of international law:

> According to any accepted interpretation of the principle of self-determination, there is therefore no doubt, that since 1948 Jordan has been a Palestinian state...the Palestinian Arabs already have a homeland in Jordan...the claim that Israel's existence deprives the Palestinians of a national home is therefore an erroneous claim...it is strange that the UN Secretariat, which ostensibly deals with the clarification of international law, disseminates these claims without any examination or distinction.[32]

It is indeed true that the reins of power in Jordan are held by the Hashemite dynasty, which represents the Bedouin minority in the country, but in this regard Jordan is no different from most of the Arab states, in which a minority rules over a majority. In Syria the Ba'ath Party rules, its members belonging to the Alawite community, which forms a minority of the Syrian population. In Iraq as well the Ba'ath Party rules, its members belonging to the Sunni community, which forms a minority of the Iraqi population. The fact that to a certain extent the Palestinians are deprived in Jordan does not grant them the right to an additional state, but rather to a constitutional change within Jordan. Thus it is indicative that despite Jordan's being a Palestinian state by every criterion of international law, this

fact does not receive recognition from the UN, which for years has submitted to Arab pressure and mendacious Arab rhetoric.

The truth, of course, is that the Palestinians are not at all interested in an additional separate Palestinian state in itself, but view this in terms of pan-Arab unity, which will put an end not only to the state of Israel but also to the artificial Arab political entities that were established by dint of international law. On this point Palestinian nationalism does not differ from the other extreme nationalist movements in the Arab states, which seek to put an end to the territorial fragmentation that the Western powers imposed on them. Thus, immediately after the Palestinians are granted a state in the territories of Judea, Samaria, and Gaza, they will – unless Israel moves quickly to prevent it – begin a military and political offensive whose goal will be Israel's destruction. After that goal is achieved (to repeat, unless Israel moves quickly to prevent it), there will be no further need for a separate Palestine, but rather for integration with "the great Arab nation", the modern heir of the vanished caliphate. All of this is not whispered in secrecy behind closed doors, but spelled out plainly in the Palestinian Covenant, which was drafted early in 1964 and revised at the Cairo conference of July 1968. The Arabs have often reiterated these points, and there may be no more precise formulation of the real face of Palestinian nationalism than the statements of Zuhair Muhsein, head of the terrorist Saika organization:

> The Palestinian people does not exist. The establishment of a Palestinian state is a means to the continuation of the struggle against Israel and for Arab unity...in truth, there are no Jordanians, Palestinians, Syrians, and Lebanese. All belong to the Arab people.[33]

Thus, as noted earlier, Palestinian nationalism is not only based on force but is a false parody of Jewish nationalism, created as an antithesis to political Zionism. To ensure the continued realization of Zionism in the third millennium, Israel must strive for peace with the Arab states on the basis of the UN Charter, with no need for any additional peace treaties with these states – such treaties being, from the standpoint of the Charter, superfluous, and from the standpoint of the Law of Treaties, in fact, illegal. To the extent that bilateral agreements are necessary, it is not for the purpose of ending the state of war between Israel and the Arab states but to create positive bilateral relations in political, economic, and cultural domains.

At the same time, the state of Israel must do everything in its capacity to prevent the establishment of an additional independent Palestinian state in the territory west of the Jordan River. It must act in the spirit of the principles of international law as well as those of the original Palestine Mandate, that made the creation of the Jewish National Home clearly dependent on the condition that "nothing should be done which might prejudice the civil and religious rights of the existing non-Jewish communities in Palestine." The rights of the Palestinians, in the territories of the Land of Israel, should be determined in the framework of Israel's constitutional law, ensuring both their individual and collective freedom but without relinquishing sovereignty over the entire area of Mandatory Palestine to the west of the Jordan River.

Israel, as a sovereign state, must transfer as many rights as possible to the Palestinian Authority, while at the same time retain the residual rights of sovereignty, including and especially the following: complete control over internal and external security; complete control over entry and exit to outside of its borders, while ensuring the continuation of the immigration to Israel on the one hand and the rejection of the Palestinian inversion of the "right of return" on the other hand; complete control over the acquisition of properties in its sovereign territory, while ensuring the continuation of Jewish settlement in the entire area of the Land of Israel, but without harming the natural development of Palestinian settlements in Judea, Samaria, and Gaza; complete control over all natural resources in its territory, particularly water sources. If Israel does not act in this way, it will find itself facing not only a new White Paper in a Palestinian edition that will put an end to the glorious Jewish settlement of over a century, but an existential danger to the state.

Epilogue

The international posture that will be adopted in the upcoming period toward the Arab-Israeli conflict as a whole and the Israeli-Palestinian conflict in particular may have fateful implications, not only for the future of the parties to the conflict but also for that of international law and its institutions. Modern international law and its institutions came into being after the First World War as a result of the United States' intervention in the war, which led not only to the victory over Germany and its allies but to the establishment of a new world order as well, centered on the recognition of the various nations' right to self-determination in the form of political sovereignty. Until that time, the world had been organized on the basis of

loyalty to the dynastic monarchy and to religious institutions rather than to the nation. The monarchy was the single unifying principle of these multiracial empires and the only guarantee of any order, even if it came at the price of the freedom of the masses, both as individuals and as groups with ethnic identities. International law, in other words, lacked its main, fundamental unit: the nation-state. The traditional interstate law could not really be called "international law" because it regulated the relations only of a few European powers, all of which were multinational.[34]

The great flowering of international law and its institutions – the most important of which was the League of Nations – occurred in the 1920s, after which it began to disintegrate. The rise of Nazi Germany signified the end of international law and the reversion to the old world order, in which international relations were based on force rather than equality. The defeat of Nazi Germany gave renewed momentum to international law and its institutions, with the creation of the United Nations and the basing of the world order on the UN Charter, whose most important principles are the criminalization of war and the recognition of equality among nations. However, the UN did not have even the brief grace period that its predecessor, the League of Nations, enjoyed. Immediately after its establishment the UN became involved in the Cold War, which made it and its Charter almost irrelevant to international life.

During the Cold War period, the UN was disdained as a recourse. For decades the international organization was in fact paralyzed, serving as an arena for demagoguery and empty propaganda rather than political action. The Security Council was neutralized on most important issues, and the General Assembly was dominated by the demagoguery of the Third World states. The UN's failure to implement its declared objective – the establishment of a general security system – stemmed, first and foremost, from the superpowers' unwillingness to support the organization. Because of the enmity between them, and indeed despite their great military power, the United States and the Soviet Union were almost impotent. The Arab states, like other Third World states, found room to maneuver in the vacuum created by the interbloc anarchy, and did all in their power to destroy the state of Israel. In the Cold War period, international relations were regulated by crude military power rather than international law, as seen in history in general.

Once the Cold War ended, international law was no longer regarded as an imperialist tool to gain advantages for the West but as a legitimate instrument for regulating international relations. International law, which up to the late 1980s was regarded only as quasi-law because it was unenforceable in the international arena, has more recently become genuine law, in the sense that we ascribe to domestic law. The historical gap between international law and domestic law is closing, as the major political interests and forces in the world recognize the value of the former and are prepared to endorse it. The UN has suddenly grown teeth and begun to bite. International law has ceased to be a virtuous aspiration and is becoming a strong and definite interest of the entire industrialized North. The international community's intervention in the second Gulf War in the early 1990s (the first was the one between Iraq and Iran in the 1980s) was the first foretaste of what was likely to ensue in the future whenever consensus was attained in the industrialized North. This, the first crisis on an international scale since the end of the Cold War, demonstrated that where there is agreement among the powers, international law can be imposed on whoever violates it, such as Saddam Hussein. It became clear that Iraq, which saw itself as "the march of God across the nations" (in the words of Friedrich Hegel) and its leader as the son of the gods, was no more than a territorial corporation with a director-general at its head, and that when it violated international law the international community could intervene against it, much as the nation-state can intervene against lawbreakers within the sphere of its jurisdiction. Although this intervention was not done out of abstract considerations of justice but because of economic and political interests, its legitimacy derived from international law.

The history of political Zionism overlaps to a great extent with the history of modern international law and its institutions. The first international recognition of Zionism as a political movement, and of its penetration into the Middle East, was attained as a result of the fall of the Ottoman Empire and the entry of the British into the region. The Balfour Declaration and its adoption by the League of Nations were only made possible by accordance with the political outlook of Britain and the United States, one of whose main elements was modern international law. Similarly, the UN resolution in favor of Israel's establishment would not have been possible without the short honeymoon between the Soviet Union and the United States, just before the Cold War began. Today, in the aftermath of the Cold War, political Zionism can open a new page in its history if it is perspicacious

enough to make use of international law, and even contribute to its development. The change that is required today is one of principles and not of technicalities. If the UN clings to resolutions of a pronounced political character that are fruits of the Cold War, such as Resolution 242, it will not be able to promote international law, on whose basis it arose and continues to exist. If, however, it changes its ways and adopts resolutions of a legal-moral character, founded on the principle that "Right cannot grow from injustice," then it has a bright future ahead of it. Then the longed-for Copernican revolution in international relations will occur, changing world politics from power-based to law-based: law will no longer revolve around power, but power around law, power in the service of international law.

Endnotes

1 On the special conditions of European history, in comparison to the history of the Middle East and the Far East, see Paul Kennedy, **The Rise and Fall of the Great Powers: Economic Change and Military Conflict from 1500 to 2000** (Vintage Books, 1989), Ch. 1.

2 See Bernard Lewis, **Islam and the West** (Oxford University Press, 1993).

3 Ibid.

4 See the discussion on "The Doctrine of Just War" in Yoram Dinstein, **Dinei Milhama [Laws of War]** (Schocken, 1983), pp. 43-46 (Hebrew) (hereinafter **Laws of War**). Jihad is in a certain sense a kind of just war in that it confers justification on war only insofar as it is aimed at imposing Islam on the whole world, but not in other cases. War may thus become unjust, and even illegal, only when the whole world lives under Islam. Hence, so long as this aspiration has not been fulfilled, "jihad...may be stated as a doctrine of a permanent state of war," in the words of the Arab Orientalist Majid Khadduri in **War and Peace in the Law of Islam**; cited in Arieh Stav, **Hashalom: Karikatura Aravit [Peace: An Arabian Caricature]** (Zmora-Bitan, 1996), p. 67 (Hebrew).

5 Precisely on its central point, the distinction between aggression and self-defense, the Charter remains vague and obscure, so that it is difficult to make practical use of it. The first attempt to define what constitutes aggression on the international plane was made in 1933, in a series of treaties between the Soviet Union and its neighbors that are named after the Soviet foreign minister Litvinoff. See Dinstein's discussion of this subject in **Laws of War**, pp. 81-82, and also in the book by Natan Feinberg, **Eretz Yisrael Bitkufat Hamandat v'Medinat Yisrael: Ba'ayot Bamishpat Habenleumi [The Land of Israel in the Mandate Period and the State of Israel: Problems in International Law]** (Magnes, 1963) pp. 270-282 (Hebrew) (hereinafter **Problems in International Law**).

6 See Feinberg, **Problems in International Law**, pp. 242-245, 265. The Israeli approach was based not only on the situation that was created by the armistice agreements but also on the legal situation, which derived from the revolutionary nature of the UN Charter. If in the past, war constituted the normative status, in the light of the Charter, peace constitutes the normative status. Peace is a permanent situation, from time to time violated by hostile activities, then resuming with their termination. Thus in modern international law there is no longer a place for the traditional term "intermediate condition", of nonpeace and nonwar. From a sociological standpoint an intermediate condition is possible, but

not from a legal standpoint. See Feinberg, **Problems in International Law**, pp. 230-269.

7 Ibid., pp. 24-242.

8 Harold Fisch, **Tzionut shel Tzion** [**Zionism of Zion**; its original English version was **The Zionist Revolution**] (Zmora Bitan, 1982), p. 131 (Hebrew) (hereinafter **Zionism of Quality**).

9 Cited by Arieh Stav in "Haradicalism Hayehudi" ["Jewish Radicalism"], **Nativ**, 2/2000, p. 73.

10 See Fisch, **Zionism of Quality**, p. 142.

11 Cited in Yoram Dinstein, "The Legal Issues of 'Papa War' and Peace in the Middle East", **St. John's Law Review**, 44.446, p. 478 (hereinafter "Middle East").

12 See Dinstein, **Laws of War**, p. 35.

13 The principle of "The sinner must not be rewarded" is indeed time-honored, but only with the criminalization of war did it become the most important principle of modern international law, which does much to close the gap between it and domestic law. For a discussion of the implications of this principle, see Dinstein, **Laws of War**, pp. 58-65. See also his books **Amanot Benleumiot** [**International Treaties**] (Schocken, 1974), p. 61 (Hebrew) (hereinafter **International Treaties**), and **Hamishpat Habenleumi V'hamedina** [**International Law and the State**] (Schocken, 1971), pp. 122-123 (Hebrew) (hereinafter **International Law and the State**). Before the Law of Treaties came into force, the notion that an aggressor may not benefit from his aggression could be found in a series of international documents and treaties, beginning with the letters sent by the U.S. government to China and Japan in January 1932, which became the Stimson Doctrine, named after the U.S. secretary of state. See **International Law and the State**, pp. 126-127.

14 See Yoram Dinstein, **Hamishpat Habenleumi Ha al-Medinati** [**Nonstate International Law**], pp. 144-159 (Hebrew).

15 The question discussed in Israel as to whether, in its resolutions since the Oslo agreements, the PLO indeed intended to cancel the Palestinian Covenant was secondary to the question of these agreements' validity in light of Article 52 of the Law of Treaties. For a discussion of the question of the cancellation of the Covenant, see Eliav Schochetman, **Nativ**, 3/94 (Hebrew).

16 On the political nature of UN resolutions, see Yehuda Tzvi Blum, "Tziun Bamishpat Habenleumi Nifdata", ["Zion Has Been Redeemed in International Law"; hereinafter "Zion Has Been Redeemed"], **Hapraklit** [The Attorney], vol.

27 (1971), p. 315. On p. 317 he notes: "One should recall that considerations of international law are not the decisive considerations that guide the Assembly and the Security Council in their decision-making; these are two organs on which the UN Charter has conferred the status of political organs, as distinct from the International Court, which is the main judicial organ of the UN." On the advisory, noncompulsory nature of 242, see Dinstein, "Middle East", p. 477.

17 On the political background of Resolution 242, see Yaacov Shimoni, **Leksikon Politi shel Ha'olam Ha'aravi** [Political Lexicon of the Arab World] (Keter, 1988), pp. 349-350 (Hebrew). See also Ezra Sohar, **Pilegesh B'Mizrach Hatichon** [**A Concubine in the Middle East**] (Dvir, 1994), pp. 39-41 (Hebrew).

18 In the past, international law recognized two main forms of acquisition of territory by force. The main form was by means of peace treaties, in whose framework the defeated state transferred territories to the victorious state. The second form was by means of a unilateral step by the victorious state, at a time when the government of the defeated state was collapsing so that this state had actually ceased to exist. Acquisition of territory by means of a peace treaty was defined as "cession", and acquisition of territory by means of a unilateral act was defined as "annexation". However, with the criminalization of the use of force, these two traditional forms no longer have any validity. See Dinstein, **International Law and the State**, pp. 122-128.

19 For a discussion of territorial rights in the era of the UN Charter, see Dinstein, **Nonstate International Law**, pp. 148-149.

20 Dinstein, **International Law and the State**, p. 123.

21 See Yoram Dinstein, "Tzion Bamishpat Habenleumi Tefadeh" ["Zion Will Be Redeemed in International Law"] **Hapraklit**, vol. 27 (1971), p. 5.

22 Op cit., Blum, "Zion Has Been Redeemed", pp. 318-322.

23 It has indeed been argued in the legal literature that peace treaties that result from a defensive war are not invalid insofar as they are the result of a legal use of force. According to this conception, peace treaties are invalid only if they provide advantages to the aggressor state. However, if they provide advantages to the state that was the victim of aggression, they are not invalid and may be legitimate, and may even serve as a legitimate means for the transfer of territories from one party to the other. This is, for example, Dinstein's stance in **International Law and the State**, p. 123, and also in **Laws of War**, pp. 40-41. This stance may be correct from a logical standpoint, but it is immaterial from a practical standpoint. True, there is no legal obstacle to the victim's adding the right of sovereignty to his right of possession by means of an agreement, but practically speaking this does not make sense since, in political actuality, no

aggressor will willingly relinquish a territory that was taken from him. To make the transfer of sovereignty conditional on the aggressor's willingness is to give the aggressor the right of refusal, which contradicts the principle that the sinner may not benefit from his sin. The main flaw in this conception is that it does not take account of the revolution that the UN Charter has brought about in international law, which made the right to peace absolute and unconditional. Any attempt to set preconditions on the right to peace derogates from this basic right, with no legal justification, in that it gives the other side the right of refusal of peace. In practice any right of refusal becomes a bargaining chip for the other side, as may be demonstrated from the behavior of the Arab states, especially since the Six Day War. The Arab formulation of "territories for peace" shows that the provision of the right of refusal of peace to any side, and especially the aggressor, will likely lead to the imposition of an agreement, even if it is ostensibly voluntary, on the victim. From this one may conclude that today it is impossible to settle a sharp border dispute by means of an agreement, but only by means of transferring the controversy to the litigation of international justice. In the absence, however, of an obligation to resort to such litigation, it is doubtful that there is any way to compel the victim of aggression to participate in it, since only he stands to lose from it. The moment Israel's absolute and unconditional right to peace is recognized, it has no further political motivation for litigation on the issue of the territories taken in the Six Day War. Note that with the signing of the peace treaty with Jordan, the debate as well ended at least with respect to Israel's eastern border, as the international Israeli-Jordanian border was determined in accordance with the Mandate's definition of the international border, as stated in Article 3(1) of the treaty. The treaty with Jordan indeed states, in Article 3(2), that the fixing of this border is done "without prejudice to the status of any territories that came under Israeli military government control in 1967"; yet it is doubtful that there was any need for this article in light of the fact, as explained above, that peace agreements are no longer a means for the transfer of territories. Note also that the legal controversy between Prof. Dinstein and Prof. Blum turned on the question of how sovereignty could be applied to eastern Jerusalem, and one may not simply extrapolate from it to the application of Israeli sovereignty to the Golan, which is not included in the Mandatory Land of Israel. From the standpoint of international law, Israel's status in Judea, Samaria, and Gaza rests on two foundations: prior sovereignty on the basis of the Land of Israel Mandate, as well as the acquisition of a right through a defensive war; whereas the claim of sovereignty over the Golan rests on but one foundation: the acquisition of a right through a defensive war.

[24] Op cit., Feinberg, **Problems of International Law**, pp. 3-10.

[25] Especially interesting is the fact that at the time the Land of Israel Mandate was awarded to Britain for the benefit of the Jewish people, its national identity was not at all a matter of controversy. The United States saw Zionism as the paragon of national movements, having begun as far back as the Jews' expulsion by Rome. Britain stated that not only is Zionism the most ancient national movement in history but that it had indeed originated in the exodus from Egypt. See Feinberg, **Problems of International Law**, p. 18.

[26] Ibid., pp. 69-72.

[27] Ibid., pp. 118-124.

[28] Article 80(1) of the UN Charter stipulates the continuity of the international obligations that the League of Nations took upon itself, and states, among other things, that "nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples." This article is intended, among other things, to ensure the continuity of the Jewish people's international rights in the Mandatory Land of Israel, as set forth in the Mandate. Thus the article expressly uses the term "people" and not just state.

[29] See Julius Stone, "Yarden Hi Falestin" [Jordan Is Palestine], **Nativ**, 3/1994, pp. 22-30 (Hebrew).

[30] On the legal situation that was obtained in Judea and Samaria in the period 1949-1967, see Blum, **Zion Has Been Redeemed**, pp. 318-320. To be fair, one should note that the situation in the Gaza Strip is different; an attempt was even made there to establish an independent state, along the lines of "Gaza first". This attempt, however, was quickly aborted because of the sharp opposition of Jordan and Egypt. However, the aspiration to independence in the Gaza Strip is at least partially explainable by the fact that it was not annexed by Egypt and its citizens were not granted Egyptian citizenship; instead, Egypt held Gaza as a tool in the struggle against Israel, and most of the terrorist actions in this period were staged from there.

[31] On the status of Resolution 242 in Judea and Samaria, see also Howard Grief, "Hahlata 242 Aina Yasima b'Yosh" [Resolution 242 Is Not Applicable to Judea and Samaria], **Nativ**, 6/99, pp. 15-17.

[32] Op cit., Stone, "Jordan Is Palestine."

[33] Cited in Fisch, **Zionism of Quality**, p. 145.

[34] See Paul Johnson, **The History of the Modern World from 1919 to the 1990s** (Dvir, 1993), Ch. 1. It is worth noting that none of the European powers such as Britain or France, whose basis is national, were nation-states but rather

multinational empires. True, in terms of their regimes Britain and France were substantially different from the traditional monarchical empires (such as the Hapsburgs or the Czars), and also from the non-European monarchical empires (such as the Ottomans in the Middle East or the Ching Dynasty) – but in one regard they were identical to these: in being multinational empires rather than nation-states in the modern sense of the concept. That is why Britain and France were not the initiators of modern international law but rather the United States, under the government of Woodrow Wilson (Johnson, Ch. 1). Here it is important to note that Wilson's policy did not stem from idealism alone but also from the competition that was then beginning with the Soviet Union, which was newly established and championed the liberation of all peoples as part of its struggle against the Western powers (Johnson, Ch. 1).

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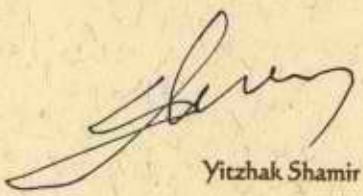

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התאחדות הקבלנים והבונים ניגשה לגיבוש עמדתה מתוך חשש לפגיעה בענף הקבלנות הישראלי, אך גם מתוך תקווה כי המעבר להסכם סחר חופשי עם הרשות הפלשתינאית (להלן - הרש"פ), עשוי ליצור הזדמנויות עסקיות גם לענף הקבלנות בישראל.

החשש נבע בעיקרו מהסכנה כי סחר בשירותי בנייה בין מדינת ישראל והרשות הפלשתינאית תגרום לפגיעה בקבלנות הישראלית, תרחיש שאנו כמובן מחויבים למנוע את התרחשותו.

הנחת העבודה לצורך הכנת המסמך הייתה כי הסכמי הסחר שיחתמו עם הרש"פ יהיו תחת משטר של "הסכם סחר חופשי בין המדינות".

אנו בדעה כי על הסכמי הסחר להיות מבוססים על שלושה עקרונות מרכזיים: הדדיות, יצירת תנאי תחרות שווים בין קבלנים פלשתינאים וישראלים בשטחי הרשות ובישראל, והגנה על הצרכן הישראלי.

יודגש, כי העקרונות המוצגים במסמך זה הנם שלובים זו בזה. נטילה של חלק מן העקרונות, ודחייתם של עקרונות אחרים, ישמיטו את בסיס המסמך כולו. רק אימוצם של

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הנשיא העקרונות כולם, כחבילה אחת, יוכל להפחית הסכנה הממשית לפגיעה בענף הבנייה, בצרכני הדירות בישראל ובתחרות ההוגנת.

המסמך המצורף מתייחס בעיקר לנושאים אשר ייכללו בהסכם הסחר העתידי עם הרש"פ, תוך הצעת "כללי משחק הוגנים" לפיהם, הפעילות של גורמים פלשתינאים שונים תוכפף לחקיקה הישראלית. בנספח א' אנו מביאים הצעות לשינויים נדרשים בחקיקה הישראלית בנוגע לחלק מן הנושאים שבנדון.

יודגש, כי יש לראות מסמך זה כהתייחסות ראשונית שתגובה ותלווה בהצעות ובניתוח פרטני במועד מאוחר יותר, ולאחר שתתבהר תמונת המצב באשר להסדר הסחר הצפוי מול הרש"פ.

המסמך מפרט מספר רעיונות באשר לדרכים בהן תוכל מדינת ישראל לעקוב אחר מימוש ההסכמים, אך גם להתגונן מפני הפרות מהותיות של ההסכמים.

אין לנו ספק כי רק שיתוף פעולה בין הממשלה והתאחדות הקבלנים והבונים יאפשר לגבש תפיסה כוללת באשר לרוח ההסכמים ולדרכים המשפטיות והמנהליות.

לצורך גיבוש עמדתה נעזרה התאחדות הקבלנים והבונים בשורה של מומחים:

מר אמנון נויבך - כלכלן, לשעבר הציר הכלכלי בוושינגטון, היועץ הכלכלי של ראש הממשלה וסגן הממונה על התקציבים במשרד האוצר.

עו"ד רפי שטיין - היועץ המשפטי של התאחדות הקבלנים והבונים.

רו"ח צור פניגשטיין - MBA - מנהל תחום כלכלה ומימון בחברת קסלמן יועצים PWC (PricewaterhouseCoopers).

מר ניראון חשאי - מרצה לניהול בינלאומי בפקולטה לניהול באוניברסיטת ת"א ומומחה להסכמי סחר בינ"ל.

אני מקווה כי ממשלת ישראל תעשה שימוש במסמך זה וכי עמדתנו המקצועית תעמוד מול הנושאים והנותנים ותשמש אותם לטובת הכלכלה הישראלית. כמובן שהתאחדות הקבלנים והבונים תשמח לעמוד לרשותך במהלך הדיונים.

בברכה,

שמואל ארד, אלוף (מיל')
מנהל כללי

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התאחדות הקבלנים והבונים בישראל
ASSOCIATION OF CONTRACTORS AND BUILDERS IN ISRAEL

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עמדת התאחדות הקבלנים והבונים בישראל בנושא הסכמי הסחר

עם הרשות הפלשתינאית

א. רקע

במסגרת המשא ומתן המדיני על הסכם הקבע בין ישראל והרשות הפלשתינאית מתנהל משא ומתן כלכלי בין נציגי משרד התעשייה והמסחר בישראל לבין הרשות הפלשתינאית על מהות יחסי הכלכלה העתידיים בין ישראל והפלשתינאים.

כיום, מהוות ישראל והרשות הפלשתינאית (להלן: "הרש"פ") יחידה כלכלית אחת, וזאת בהתאם להסכמי פריז (1994), אשר קבעו כי הסכמי הסחר בין ישראל והרש"פ יהיו מבוססים על עקרון של "איחוד מכסים" (Customs Union). כלומר, בין שתי הישויות הכלכליות אין מגבלות על תנועת סחורות ושירותים (למעט מגבלות ביטחוניות), וקיימת מעטפת מכס אחידה לישראל ולרש"פ.

המו"מ הכלכלי הנוכחי צפוי להגדיר מערכת יחסים כלכלית שונה, שתהיה מבוססת, ככל הנראה, על הסכם סחר חופשי בין המדינות (FTA-Free Trade Agreement). הסכם זה מאפשר להגדיר מעטפת מכס חיצונית ודרישות תקינה שונות לישראל ולרש"פ, כאשר הסחר הדו-צדדי במרבית המוצרים והשירותים המיוצרים בישראל או ברש"פ יישאר ללא מגבלות. הסכם מסוג זה מחייב למעשה הקמת תחנות גבול בין ישראל והרש"פ לצורך פיקוח על כניסת סחורות ושרותים ממדינות שלישיות ועל עמידה בתקנים.

התאחדות הקבלנים והבונים בישראל (להלן: "התאחדות הקבלנים" או "ההתאחדות") הנה הגוף היציג של הקבלנים וחברות הבנייה והתשתית בישראל. בשל העובדה שענף הבנייה בישראל הוא אחד הענפים בהם שיתוף פעולה ישראלי-פלשתיני הוא מהבולטים ביותר (עובדים פלשתינים העובדים בארץ, קבלנים פלשתינים הפועלים בישראל וכדומה), ובשל הקרבה הגיאוגרפית בין ישראל והרש"פ, מעונינת ההתאחדות להציג את עמדתה בנושא סחר בשירותים, רכש ממשלתי ותנועת עובדים לקובעי מדיניות הסחר של ישראל במשרד התעשייה והמסחר.

מכיוון שהסכמי סחר מטרתם להגביר את שיתוף הפעולה בין מדינות, תוך הגדלת היקף הסחר בסחורות ובשירותים ותוך שמירה על תחרות הוגנת, מטרת ההתאחדות היא להשפיע על מאפייני הסכם הסחר שיחתם, כך שהסכם סחר בין ישראל לרש"פ יעודד שיתוף פעולה ישראלי-פלשתיני בענף הבנייה, אך <u>לא יפגע בקבלנים ובצרכנים הישראליים</u>.

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ב. מטרת המסמך

מטרת המסמך הינה להציג את עמדת התאחדות הקבלנים בנוגע לנושאים השונים הכלולים בהסכם הסחר העתידי עם הפלשתינאים, תוך התייחסות להשלכות הסכם זה על הקבלנים והצרכנים הישראליים.

יודגש, כי העקרונות המוצגים במסמך זה הינם שלובים זה בזה. נטילה של חלק מן העקרונות, ודחייתם של עקרונות אחרים, ישמיטו את בסיס המסמך כולו. רק אימוצם של העקרונות כולם, כחבילה אחת, יוכל להפחית הסכנה הממשית לפגיעה בצרכני הדירות בישראל ובתחרות ההוגנת.

ההתאחדות טרם החלה בבחינה מקפת של ההיבטים המשפטיים הכרוכים בנושא שבנדון (למשל, שינויים נדרשים בחקיקה הפנימית בישראל). לפיכך, בכל מקרה אין לראות במסמך זה כממצה את עמדת ההתאחדות בנוגע להסדר הסחר הצפוי בכלל, ולהיבטיו המשפטיים בפרט. לניתוח משפטי, לרבות הצעות לשינויים נדרשים בחקיקה הישראלית בנוגע לחלק מן הנושאים שבנדון - ראה חוות דעת עו"ד ר. שטיין, המצורפת כנספח "א" למסמך זה. יודגש, כי מדובר בהתייחסות משפטית ראשונית, שתגובה בניתוח משפטי מפורט במועד מאוחר יותר, ולאחר שתתבהר תמונת המצב באשר להסדרי הסחר הצפויים מול הרש"פ.

ג. עקרונות מנחים

עמדת התאחדות הקבלנים בישראל מתבססת על העקרונות הבאים:

(1) הדדיות:

הקפדה על עמידה של קבלנים פלשתינאים בכל התנאים והחיקוקים המוטלים על קבלנים ישראליים, כולל: חוקי עבודה ובטיחות, דיני העסקת עובדים זרים, חוקי המס, רישום קבלנים, תקנים וחוקי המכר (דירות).

(2) מניעת העדפה של קבלנים פלשתינאים:

הדדיות בפתיחת השוק הפלשתינאי לפעילות של קבלנים ישראליים, ובפתיחת השוק הישראלי לפעילות של קבלנים פלשתינאים.

(3) הגנה על הצרכנים:

הבטחת רוכשי הדירות מפני פגיעה אפשרית כתוצאה מאי עמידה בתקנים, חוקי התכנון והבנייה, תקופות בדק ואחריות, וכן הבטחת השקעתם, במיוחד נוכח העובדה כי רכישת דירה מהווה

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<u>עקרונות אלו יבואו לידי ביטוי בשלושה סעיפים עיקריים של הסכם הסחר עם הרש"פ: סחר בשירותים, רכש ממשלתי והעסקת עובדים, כמפורט בסעיף ד להלן.</u>

הנחת העבודה לצורך הכנת המסמך הינה כי הסכמי הסחר שייחתמו עם הרש"פ יהיו תחת משטר של "הסכם סחר חופשי בין המדינות" (FTA-Free Trade Agreement). במידה ובפועל ייקבע משטר סחר אחר הסכם על משטר סחר שונה, שומרת לעצמה ההתאחדות את הזכות לגבש מסמך עמדה חלופי שיתייחס להסדר המוצע.

המעבר מהסכם "איחוד מכסים" להסכם סחר חופשי (או להסכם הכולל אלמנטים מעורבים של איחוד מכסים והסכם סחר חופשי) הופך את הקבלנים, העובדים וספקי התשומות הפלשתינאים מספקי תשומות "מקומיים" לספקי תשומות "זרים". במסגרת הסכם הסחר החופשי לא יוטלו מגבלות מכסיות (Tariff Barriers) ומגבלות לא מכסיות (Non-Tariff Barriers) על תנועת סחורות ושירותים. מגבלות הסחר היחידות תהיינה מסיבות של בטחון, בריאות הציבור, תחרות לא הוגנת (למשל, מכירה במחירי היצף) ופגיעה ברגשות הציבור (מסיבות מוסר ודת).

מכיוון שענף הבנייה הוא, למעשה, ענף שירותים (למעט בתחום אספקת חומרי בנייה ותשומות אחרות), הסעיפים העיקריים בהסכם הסחר העתידי בין ישראל והרש"פ שאליהם יש להתייחס הם נושאי הסחר בשירותים, הרכש הממשלתי והעסקת עובדים בין ישראל לרשות הפלשתינאית.

הסכמי סחר בין מדינות נועדו להגביר את שיתוף הפעולה ואת הסחר ההדדי בין מדינות, אך מצד אחר לאפשר תחרות הוגנת. במקרה הישראלי-פלשתינאי חוברים מספר גורמים להגדלת הפוטנציאל להיווצרות סחר ושיתוף פעולה. בין גורמים אלה ניתן למנות:

האינטראקציה הממושכת הקיימת בין ענף הבנייה בישראל וקבלנים ועובדים מהרש"פ.

העובדה שישראל חברה בארגון הסחר העולמי (WTO) וחתומה על הסכמי GATT (General Agreement on Tariffs & Trade) ו- GATS (General Agreement on Trade in Services) (סביר להניח שגם הרש"פ תבקש להתקבל כחברה ב-WTO תוך זמן קצר).

העובדה שקיים פוטנציאל רב לפעילות של קבלנים ישראליים בפרוייקטים עתידיים ברשות הפלשתינאית (הקמת נמל עזה, הרחבת שדה התעופה דהניה, פיתוח מערכות הכבישים והתשתיות, הקמת אזורי תעשיה והקמת מבני מגורים ומבנים ציבוריים ברש"פ).

עם זאת, תחרות לא הוגנת מצד קבלנים פלשתינאים עלולה לפגוע בקבלנים ישראליים ובאיכות ורמת הבנייה בארץ, תוך גרימת נזק לענפי שירותים ותעשיות נלווים, יצירת סיכונים ביטחוניים ופגיעה בצרכנים (אשר יקבלו דירות בטיב ירוד, ללא אחריות מתאימה).

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ענף הבנייה בישראל מאופיין ברגישות יתר להיווצרותם של "כשלי שוק" (מצבים בהם פעולת ה"שוק" ללא התערבות המחוקק אינה מביאה לשיווי-משקל תחרותי ויעיל). כשלי שוק אלה עלולים לפגוע, ראשית כל, בצרכנים. קיומם של כשלי השוק נובע ממאפיינים הייחודיים לענף הבנייה:

קיומו של מידע חלקי בידי הצרכן והעדר כלים להבנת המידע על ידי הצרכן (נדרשת מומחיות בתחום);

קיומה של התקשרות ארוכת טווח, במהלכה מתרחשים מאורעות עתידיים מהותיים שאינם ידועים (או ודאיים) במועד ההתקשרות הראשוני (למשל, ליקויי בנייה שעלולים להתגלות שנים רבות לאחר האכלוס);

לפיכך, רגולציה של ענף הבנייה הנה בעלת חשיבות מרכזית ככלי למניעת כשלי השוק כאמור, ובהגנת הצרכן.

הרגולציה של ענף הבנייה חשובה גם נוכח העובדה שמדובר בתחום הנוגע לבטיחות ובריאות הציבור (ובמקרים של פגיעה כתוצאה מהתרשלות, תשא המדינה בחלק ניכר מן הנזק), נוכח ההשלכות המיידיות שיהיו לכל פגיעה בענף הבנייה על כלל המשק בישראל, ונוכח הבעייתיות באכיפת הדינים. כפועל יוצא, יצרה המדינה מנגנונים רגולטוריים המיועדים להגנה על ציבור רוכשי הדירות (למשל, חוק המכר (דירות), תשל"ג - 1974, חוק המכר (דירות) (הבטחת השקעות של רוכשי דירות), התשל"ה - 1974, וכן חוקי רישוי ודינים נוספים). לפירוט נוסף, ראה חו"ד עו"ד שטיין בנספח "א".

לקבלנים פלשתינאים אין היסטוריית פעילות מספקת בענף הבנייה בישראל או אף בשטחי הרש"פ, ולפיכך, לא ניתן כיום להסיק בדבר יכולתם לעמוד בדרישות החוקיות הנזכרות לעיל. יתרה מזאת, בשל פערי ההכנסה והתוצר בין ישראל לרש"פ, קיים תמריץ לקבלנים פלשתינאים לנסות ולפעול בשוק הישראלי תוך עקיפת הדרישות דלעיל, ותוך ניצול חסמי הכניסה הנמוכים הניצבים בפניהם (למשל, עקב הקרבה הגיאוגרפית).

נוכח מצב עניינים זה, יש לשים דגש על קיומם של מנגנוני אכיפה ובקרה באשר לפעילותם של קבלנים פלשתינאים בישראל. כיוון שענף הבנייה הוא ענף מרכזי במשק הישראלי, יש לפעול במשנה זהירות למניעת פגיעה בענף והשלכות פגיעה כזו על כלל המשק הישראלי.

לבסוף, הסכם הסחר בין ישראל לרש"פ צריך להבטיח יצירת יחסי סחר על בסיס של תחרות חופשית והוגנת בין קבלנים ישראליים ופלשתינאים (קבלנים מבצעים וקבלנים בונים/יזמים), תוך שמירה כאמור, על האינטרסים של הצרכנים.

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ד. סעיפים מוצעים להסכם הסחר עם הרש"פ

1. סחר בשירותים

1.1. סעיף זה מתייחס למתן שירותים בענף הבנייה (קבלנות בנין, שירותים מקצועיים וכו') מהסוגים הבאים (לא כולל העסקת עובדים פלשתינאים ע"י קבלנים מישראל):

(1) שירותים המחייבים נוכחות פיסית של ספקי שירותים (קבלנים, מהנדסים, יועצים וכדומה) פלשתינאים בישראל ונוכחות ספקי שירותים ישראליים ברש"פ (Natural Persons).

(2) שירותים המחייבים הקמת גוף עסקי פלשתינאי בישראל וגוף עסקי ישראלי ברשות הפלשתינאית (Commercial Presence).

1.2. מוצע, כי הסחר בשירותים הנ"ל יהיה מבוסס על העקרונות הבאים:

(1) עקרון ה"טיפול הלאומי" (National Treatment) - תימנע אפליה בין ספקי שירותים ישראליים ופלשתינאים בתחומי הרש"פ ובישראל. לדוגמא, תיאסר אפליה בין מיסוי שירות מקומי לשירות זר, יונהגו כללים אחידים לרישום קבלנים מקומיים וזרים, ולא תוענקנה סובסידיות לשירותי קבלנות בישראל וברש"פ.

(2) עקרון ה"אומה המועדפת ביותר" (Most Favored Nation) - תימנע אפליה בין ספקי שירותים ישראליים וספקי שירותים זרים בתחומי הרשות הפלשתינאית ומניעת אפליה בין ספקי שירותים פלשתינאים וספקי שירותים זרים בתחומי ישראל.

(3) ישראל והרש"פ תתחייבנה לשמור על שקיפות בהגדרת הדרישות מספקים זרים ומקומיים בישראל וברש"פ, כולל פרסום פומבי של דרישות אלה, ומתן מענה נאות ומהיר לפניות מהצד השני בנוגע לשמירה על העקרונות שהוזכרו.

(4) נותני שירותים פלשתינאים יהיו כפופים לכל תקנות הרישוי (רישום קבלנים זרים), ההסמכה, התקנים, הדרישות טכניות, האישורים, חוקי העבודה (שכר מינימום, הפרשות סוציאליות, בטיחות בעבודה ואיכות סביבה), הגבלות כמותיות (מכסות עובדים זרים) או כל תקנה אחרת הקיימת בישראל. נותני

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שירותים ישראליים ברש"פ יהיו כפופים לתקנות המקבילות של הרשות הפלשתינאית.

(5) לא ייעשה שימוש בתקנים, דרישות טכניות, אישורים, תקנות או כל הגבלה חוקית או כמותית אחרת במטרה להפלות בין ספקי שירותים ישראליים ופלשתינאים.

(6) ישראל והרש"פ יפרסמו את כל התקנות והחוקים העלולים להשפיע באופן שלילי על הסחר בשירותים על פי עקרונות הסכם GATS.

(7) יש למנוע ממונופולים או חברות בעלות זיכיונות ממשלתיים בלעדיים בענף הבנייה בישראל וברשות הפלשתינאית, לנצל את מעמדם בדרך שאינה מתיישבת עם עקרונות הסכמי GATT ו – GATS, ובאופן הפוגע בתחרות חופשית הוגנת. לדוגמא, תובטח נגישות שווה לחומרי גלם ברש"פ ובישראל לקבלנים ישראליים ופלשתינאים.

(8) תימנע אפליה בין חברות ישראליות וחברות זרות המעוניינות לרשום חברה פלשתינאית (או להקים מיזמים משותפים ברשות הפלשתינאית). תימנע אפליה בין חברות פלשתיניות וחברות זרות המעוניינות לרשום חברה ישראלית (או להקים מיזמים משותפים בישראל).

(9) קבלן פלשתינאי הבונה דירות בישראל (קבלן יזם וקבלן מבצע) יצטרך לעמוד בכל החוקים והתקנות הרלבנטיים (לרבות חוק המכר (דירות), תשל"ג - 1974, חוק המכר (דירות) (הבטחת השקעות של רוכשי דירות), התשל"ה - 1974, וחוקים נוספים). לפירוט נוסף, ראה חוות דעת עו"ד שטיין בנספח "א".

(10) במסגרת אמנת מס שתיחתם בין ישראל והרש"פ, יש לקבוע כי קבלנים פלשתינאים הפועלים בישראל יתחייבו במס לפי דיני המס החלים על קבלנים בישראל (והמס ישולם למדינת ישראל). באורח דומה, קבלנים ישראלים הפועלים ברש"פ יתחייבו במס לפי דיני המס החלים על קבלנים ברש"פ (והמס ישולם לרש"פ).

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(11) במידה ונטל המס שבו יתחייב קבלן ישראלי העובד בשטחי הרש"פ יהיה נמוך מנטל המס המוטל בישראל, לא יתחייב הקבלן הישראלי במס נוסף בישראל (Tax Paring Clause).

2. רכש ממשלתי

2.1. רכש ממשלתי מתייחס לכל הקניות והמכרזים של גורמים ממשלתיים וציבוריים, כולל: משרדי ממשלה, רשויות מקומיות, רשויות התלויות בתקציב ממשלתי או גורמים לא ממשלתיים בעלי זיכיונות מהממשלה.

2.2. מוצע, כי תחום הרכש הממשלתי יהיה מבוסס על העקרונות הבאים:

(1) ספקי שירותים ישראליים וספקי שירותים פלשתינאים יוכלו להשתתף במכרזים ממשלתיים של הצד השני על פי עקרונות הסכם GATS של ארגון הסחר העולמי (WTO), הכוללים: פרסום מכרז בינלאומי מעל היקף כספי מסויים, פרסום המידע על מכרזים באופן פומבי, שקיפות תהליך בחירת הספק הזוכה וכדומה. לדוגמא, השתתפות במכרז ממשלתי בישראל תהיה תלויה בעמידה בדרישות לקבלת מעמד של קבלן מוכר (כוכבית) עבור קבלנים פלשתינאים, קבלנים ישראלים וקבלנים זרים.

(2) תוך 12 חודשים מיום חתימת הסכם הסחר, תתחייב הרש"פ לחוקק חוק מכרזים בהתאם לרוח עקרונות הסכם GATS. בכל מקרה, גם בתקופת הביניים עד לחקיקה כאמור, תחול חובת מכרזים על פרוייקטים ממשלתיים בשטחי הרש"פ.

(3) ישראל והרש"פ תתחייבנה לשמור על שקיפות במכרזים ממשלתיים בישראל וברש"פ, כולל פרסום פומבי של המכרזים ושקיפות תהליך בחירת הזוכים במכרז.

(4) תימנע אפלייה בין ספקי שירותים ישראלים ופלשתינאים במכרזים של גורמים ממשלתיים וציבוריים בתחומי הרש"פ ובישראל (עיקרון ה- National Treatment).

(5) תימנע אפליה בין ספקי שירותים ישראליים וספקי שירותים זרים הניגשים למכרזים ממשלתיים ברשות הפלשתינאית. במקביל, תימנע אפליה בין ספקי שירותים פלשתינאים וספקי שירותים זרים הניגשים למכרזים ממשלתיים בישראל (ע"פ עקרון Most Favored Nation).

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(6) תינתן עדיפות למיזמים משותפים של חברות ישראליות ופלשתינאיות על פני חברות זרות בפרוייקטים תשתית משותפים של ישראל והרש"פ (כבישים, מערכות ביוב ומים וכדומה).

3. העסקת עובדים

3.1. סעיף זה מתייחס בעיקר להעסקה של עובדים פלשתינאיים בישראל ע"י קבלנים ישראליים וקבלנים פלשתינאיים.

3.2. מוצע, כי תחום העסקת העובדים יהיה מבוסס על העקרונות הבאים:

(1) כניסת עובדים פלשתינאים לישראל תהיה בפיקוח, תוך נקיטת אמצעי בטחון מתאימים לפיקוח על כניסת עובדים וקבלנים פלשתינאים לישראל (רשיונות כניסה, ביקורות במעברי הכניסה לישראל וכו').

(2) תנאי ההעסקה של עובדים פלשתינאים בישראל וברש"פ ייקבעו בהתאם להגדרת זכויות העובדים הבסיסיות של ארגון העבודה העולמי (ILO), כגון: הגדרת מקסימום שעות עבודה ביום, איסור העסקת ילדים מתחת לגיל מסויים, הגדרת תנאים סוציאליים בסיסיים וכדומה.

(3) מעמדו של עובד פלשתינאי בשטחי ישראל יהיה כמעמד "עובד זר" בישראל, ויחולו עליו כל הדינים המחייבים עובדים זרים הפועלים בישראל (ראה חוות דעת עו"ד שטיין בנספח "א").

4. סיוע כספי ישראלי לפרויקטים של בינוי ותשתיות ברש"פ

4.1. היה ובמסגרת ההסכמים בין ישראל והרש"פ, תשתתף ישראל במתן סיוע כספי לפרוייקטים בתחומי בינוי ותשתיות ברש"פ, יש להתנות את הסיוע הישראלי בהשתתפות משמעותית של קבלנים ישראליים בביצוע הפרוייקטים (בשיעור שלא יפחת מ- 70% מהיקף הסיוע הישראלי הכולל לנושא הבינוי והתשתיות ברש"פ).

5. ועדת מעקב

5.1. תוקם ועדה משותפת ישראלית-פלשתינאית למעקב אחר ביצוע ומימוש ההסכם. הוועדה תדון בכל טענה של מי מהצדדים לגבי הפרת ההסכם,

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ותהיה רשאית לדרוש כל מידע רלוונטי לצורכי דיון והכרעה. הצדדים יעבירו מידע הנדרש על ידי הוועדה תוך 30 יום מיום קבלת הדרישה.

5.2. במסגרת ועדת המעקב תפעל תת-וועדה למעקב אחר ענף הבנייה ומימושו של ההסכם בנושאים שפורטו לעיל. בוועדה ישתתפו מספר שווה של נציגי מדינת ישראל והרש"פ (לרבות נציג משרד התמ"ס ונציג התאחדות הקבלנים). החלטות הוועדה יתקבלו בהסכמה הדדית, ויחייבו את שני הצדדים.

6. בוררות

6.1. במקרים של חילוקי דעות בין הצדדים והעדר הסכמה על אופי פתרונם, יסכימו נציגי ישראל והרש"פ על מינוי בורר לשם הכרעה במחלוקת. הכרעת הבורר תינתן תוך זמן קצוב, ולא יאוחר מ- 180 יום לאחר הפנייה לבורר.

6.2. בהעדר הסכמה על בורר תועבר המחלוקת ליישוב במועצה לסחר בשירותים (Council for Trade in Services).

7. מנגנוני אכיפה

7.1. ממשלת ישראל תעקוב אחר ביצועו של ההסכם על ידי הרש"פ. במקרה בו יבוצעו הפרות חד-צדדיות ומתמשכות של ההסכם על ידי הרש"פ, תהיה הממשלה בישראל רשאית לנקוט צעדי תגמול חד-צדדיים, לרבות מניעת השתתפותם של קבלנים פלשתינאים במכרזים בישראל, הגבלות על כניסת עובדים פלשתינאים ואמצעים נוספים.

7.2. עקרונות ההדדיות ויתר הכללים המפורטים ייקלטו במשפט הישראלי הנוהג, באופן אשר יטיל חובות על הרשויות השונות בישראל (וזכויות לקבלנים בישראל) בקשר עם אכיפת העקרונות שסוכמו בהסכם (להצעה באשר לתיקוני חקיקה הדרושים בהקשר זה - ראה חוות דעת עו"ד שטיין בנספח "א").

צ. קלמנטינובסקי - ר. שטיין ושות'
משרד עורכי-דין ונוטריונים

Z. KLEMENTYNOVSKI - R. STEIN & CO.
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רפאל שטיין,	עורך-דין ונוטריון
ישראלה פנדר,	עורכת-דין
נעה קלאו-לוין,	עורכת-דין
נתן לרר,	עורך-דין ונוטריון
דוד גולדבלט-לוי,	עורך-דין
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צבי קלמנטינובסקי, עו"ד ונוטריון
(1904-1992)

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20 ביולי 2000

הסכמי הסחר במסגרת הסדרי הקבע עם הרשות הפלסטינאית
עמדת התאחדות הקבלנים והבונים בישראל
<u>נספח משפטי</u>

1. <u>מבוא</u>

1.1 מסמך זה מהווה נספח למסמך עמדת ההתאחדות הקבלנים והבונים בישראל (להלן:"ההתאחדות") בנושא הסכמי הסחר עם הרשות הפלסטינאית.

בנספח זה יפורטו <u>עקרונות</u>, מנגנונים וכלים משפטיים, לצורך ישום העקרונות המסחריים - הכלכליים, המפורטים במסמך ההתאחדות.

1.2 עמדת ההתאחדות מתבססת על שלושה עקרונות מנחים: שמירה על ההדדיות, מניעת יתרון בלתי הוגן של קבלנים פלסטינאים, והגנה על צרכנים ישראליים.

1.3 הכלים המשפטיים אשר יפורטו להלן, באים ליישם עקרונות אלה ולהוציאם מן הכח אל פועל, אם באמצעות יצירת <u>מנגנוני רגולציה</u> שתכליתם לתקן 'כשלי שוק' מיוחדים אשר עלולים להיווצר כתוצאה מיצירת מציאות כלכלית - מדינית חדשה ומיוחדת בדמות הסכם הקבע, אם באמצעות <u>מנגנוני אכיפה</u>, להבטחת ישום מעשי של עקרון ההדדיות, הנמצא לדעת ההתאחדות, בבסיס ההסדרים.

2. <u>חקיקת 'חוק ישום' להבטחת עקרון ההדדיות</u>

2.1 עמדת ההתאחדות הינה, כי הסכמי הסחר יחייבו הדדיות בפתיחת המשק הפלסטיני לפעילות של קבלנים ישראליים, ובפתיחת השוק הישראלי לפעילות של קבלנים פלסטינאים, בגדר הכללים שיקבעו בהסכמי הסחר.

2.2 להבטחת ולאכיפת עקרון ההדדיות, <u>יש לקלוט את הסדרי ההדדיות במשפט הפנימי בישראל, באמצעות חקיקה בכנסת של חוק ישום</u> (כדוגמת חוק ישום ההסכם בדבר רצועת עזה ואזור יריחו (הסדרים כלכליים והוראות שונות)(תיקוני חקיקה) התשנ"ה-1994), אשר ישלב הוראות לאכיפת ההדדיות, כך שניתן יהיה לאכוף במישור הישראלי <u>הפנימי</u>, את עקרון ההדדיות שהוסכם בהסכם הכלכלי במישור <u>החיצוני</u>.

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2.3 הטכניקה של הכללת "סעיפי שמירת הדדיות" במסגרת החוק הישראלי, מוכרת וקיימת. ניתן לציין את סעיף 4(א) **לחוק אכיפת פסקי חוץ, תשי"ח - 1958** תחת הכותרת "הדדיות באכיפה", המחייב את בית המשפט בישראל, שלא לאכוף פסק חוץ, אם ניתן במדינה שלפי דיניה אין אוכפים פסקים של בתי המשפט בישראל (אם כי ס"ק 4(ב) קובע כי על פי בקשת היוע"מש, בית משפט רשאי לאכוף פסק חוץ אף שלא נתקיימה הדדיות).

כמו כן, ניתן לאזכר את תקנה 28 **לתקנות לביצוע אמנת האג (סדר הדין האזרחי), תשכ"ט - 1968**, הקובעת בס"ק (א), כי אין לצוות על מתדיין זר, ליתן בטחון או ערובה לפרעון הוצאות משפט, מחמת היותו זר, אך לעומת זאת ס"ק (ב) מסייג וקובע כי :-

"מנהל בתי המשפט רשאי להורות כי האמור בתקנת משנה (א) לא יחול על אחת המדינות בעלות האמנה שמקום מגוריו הקבוע אינו בישראל, אם אותה מדינה אינה נוהגת לפי תקנה זו לגבי אזרח ישראלי שמקום מגוריו הקובע אינו בתחומה".

למחוקק הישראלי מוכרים איפוא, הטכניקה והעקרון של אכיפת ההדדיות של הסכמי חוץ, באמצעות כלים חוקיים במשפט הפנימי.

לענייננו המסויים אנו למדים, כי בתי המשפט הישראליים עשויים שלא לאכוף פסקי דין של הרש"פ כנגד קבלנים ישראלים, במידה והרש"פ לא תאכוף פסקי דין של בתי משפט בישראל, כנגד קבלנים פלסטינים.

2.4 על ידי קליטת הסדרי ההדדיות במשפט הפנימי בישראל, תוטל על הרשויות בישראל ועל גופים ציבוריים אחרים, אם באופן מפורש ואם מכללא, הרשות וגם החובה לאכוף את ההדדיות. מנגד, תוענק להתאחדות ו/או לגורמים בענף הבניה, (וכן לממשלת ישראל על ידי היועמ"ש) זכות עמידה בבתי המשפט בישראל בהקשר לאכיפת החוק על ידי הרשות, דהיינו לאכיפת כללי ההסכם הכלכלי בכל הנוגע לנושא שבו אנו דנים.

2.5 לפיכך, חוק ישום הנ"ל יכלול, בין היתר, הוראות בנושאים הבאים:

א. חוק הישום הישראלי יקבע, כי במידה ותופר ההדדיות על ידי הרש"פ ו/או על ידי גורמים ברש"פ, תתלה ישראל את התחייבויותיה שלה על פי הסכמי הסחר.

ב. בין היתר, חוק הישום יקבע, כי במקרה שתופר ההדדיות על ידי הצד הפלסטיני, תמנע האפשרות מקבלנים פלסטינאים לנהל עסקים בישראל או , לעבוד בישראל או להשתתף במכרזים, אף אם הם עומדים ביתר התנאים ה"רגילים" לצורך השתתפות ו/או זכיה במכרז.

דהיינו, חוק הישום יוסיף את עקרון שמירת ההדדיות על ידי הרש"פ, כחובה ו/או מטלה נוספת וכתנאי סף העומד בפני קבלן פלסטיני המבקש לעבוד בישראל, טרם זכייה במכרז ו/או בעבודה בדרך אחרת, או לבצע עבודה לאחר זכיה במכרז.

ג. מלבד דרכי ההוכחה הרגילות הקיימות בדיני הראיות במשפט הישראלי בכלל, ובמשפט המנהלי בפרט, תתווספנה דרכי הוכחה נוספות, להוכחת הפרה על ידי הרש"פ, באחת או יותר מהדרכים הבאות, כדלקמן:

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1. פסק בוררות בין מדינת ישראל לרש"פ, הקובע כי ההסדר הופר על ידי הרש"פ, יהווה ראיה חלוטה להוכחת הפרת ההדדיות.

2. תעודה החתומה בידי ראש הממשלה ו/או שר התמ"ס ו/או שר האוצר ו/או שר החוץ, תהווה ראיה חלוטה בדבר הפרת ההדדיות על ידי הרש"פ.

3. דו"ח החתום על רוב חברי ועדת המעקב מטעם מדינת ישראל, בדבר הפרת עקרון ההדדיות על ידי הרש"פ, יהווה ראיה חלוטה כנ"ל.

2.6 בית המשפט הישראלי יהיה מוסמך לפסוק ולדון בעתירה אשר תוגש על ידי היועץ המשפטי לממשלה ו/או התאחדות הקבלנים והבונים בישראל ו/או כל מי שנפגע מהפרת עקרון ההדיות ו/או כל אדם לו מוקנת זכות עמידה בהתאם לכללים שגובשו במשפט המנהלי הישראלי. פסק הדין יחייב ויגבור כמובן על כל היתר, רישיון, התקשרות והסכם.

<u>החלת הדינים הישראלים הרלבנטים על גורמים פלסטינאים הפועלים בישראל בענף הבניה</u>

3. 3.1 ענף הבניה בישראל, מושפע ומוסדר ממסגרת חקיקה עניפה ביותר, כדלקמן: **חוקי רישוי תקינה**, כגון חוק רישום קבלנים לעבודות הנדסה בנאיות, תשכ"ט - 1969, חוק התקנים, תשי"ג - 1953, חוק התכנון והבניה, תשכ"ה - 1965 **חוקי עבודה** כל חוקי העבודה ה"רגילים" כגון חוק פיצויי פיטורים, תשכ"ג - 1963, חוק הגנת השכר, תשי"ח -1958, ובנוסף לכך חוקים מיוחדים כגון חוק עובדים זרים (העסקה שלא כדין והבטחת תנאים הוגנים), התשנ"א -1991 , **חוקי מיסוי** פקודת מס הכנסה, חוק מס ערך מוסף, תשל"ו 1975חוק מס רכוש, חוק מיסוי מקרקעין **חוקים ציבוריים** כגון חוק חובת המכרזים, התשנ"ב - 1992, חוק יסוד :מקרקעי ישראל, תש"ך - 1960, חוק מינהל מקרקעי ישראל, תש"ך - 1960, וכל יתר החוקים הנוגעים לניהול עסקים ועבודות הנדסה בנאיות על ידי קבלנים.

3.2 יש להחיל תחולה מלאה, את כל החוקים אלה, על קבלנים פלסטינאים ועל עובדים פלסטינאים העובדים בישראל הן בפירמות ישראליות והן בפלסטינאיות.

3.3 החקיקה הקיימת הינה מטבעה <u>טריטוריאלית</u> במהותה, ולפיכך חלה כבר עכשיו ותחול, על כל גורם הפועל בישראל, בין אם הוא ישראלי, פלסטינאי או אחר.

יחד עם זאת, במישור החקיקתי פנימי בישראל, נדרשת בחינה מדוקדקת של כל מערך החקיקה, לצורך בדיקות והתאמות <u>ספציפיות</u>, למקרים שבהם עלולות להתעורר שאלות פרשנות החוק לענין תחולתו, עקב השינויים המדיניים והכלכליים.

3.4 לדוגמא, הגדרת "מעביד" בחוק עובדים זרים (העסקה שלא כדין והבטחת תנאים הוגנים), התשנ"א -1991 . יש לקבוע במפורש כי ההגדרה כוללת גם מעבידים זרים/פלסטינאים הפועלים בישראל.

כמו כן, יש להבהיר/לחדד את ההגדרה של "עובד זר" בחוק זה, על מנת שיהיה ברור שהיא כוללת גם עובדים פלסטינאים. כך, כל החובות המוטלות על קבלנים ישראלים ביחס לעובדים זרים, יוטלו גם על קבלנים פלסטינאים ביחס לעובדים פלסטינאים, וגם על עובדים פלסטינאים

3.5 בנוסף יש לבצע תיקוני חקיקה ספציפיים, בחוקים שונים, על מנת למנוע "פרצות" שעלולות להיות מנוצלות לאפלית קבלנים ישראליים.

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כך למשל, יש לקבוע כללים מפורשים לגבי ישום סעיף 14א לחוק רישום קבלנים לעבודות הנדסה בנאיות, תשכ"ט - 1969, באופן שלא יאפשר לשר הבינוי והשיכון לתת פטור מהוראות החוק לקבלנים פלסטינאים לגבי מכרזים בינלאומיים, מסיבות פוליטיות, מדיניות או מסיבות אחרות בלתי הוגנות, אלא שמצבו יהיה זהה למצבם של קבלנים ישראלים בגדר הנורמה של השיוויון בין קבלנים, ושמירה על עקרון ההדדיות.

מנגנוני אכיפה נוספים

4. 4.1 יש לדאוג לקיומם של ערובות ומנגנוני אכיפה בחוק הישראלי, אשר יבטיחו את ביצוע ההתחיבויות המוטלות בחוק הישראלי על גורמים פלסטינאים הפועלים בענף הבניה בישראל, דהיינו על קבלנים פלסטינים ועובדים פלסטינים.

4.2 לדוגמא, על מנת להבטיח כי קבלנים פלסיטנאים אכן יעמדו בכל החובות שבדיני העבודה שמטילים החוקים הישראליים, יקבע מנגנון על פיו הקבלן הפלסטיני המבצע עבודותיו בישראל, ישלם לעובדיו הפלסטינאים דרך שרות התעסוקה הישראלי, או שרות תעסוקה משותף לרשות הפלסטינאית ולישראל, ויוטלו עליו "היטלי השוואה", באופן הדומה להסדר שנקבע ביחס למעסיקים ישראליים, בסעיף 7 להסכם פריס, ובפרק ו' לחוק הישום.

הגנת הצרכן

5. 5.1 ענף הבניה במדינת ישראל כפוף לחקיקה צרכנית נרחבת. הבולטים שבין חוקים אלה הם כמובן חוקי המכר הספציפיים; חוק המכר (דירות), תשל"ג - 1973, וחוק המכר (דירות) (הבטחת השקעות של רוכשי דירות), התשל"ה - 1974, אך גם חוקים כלליים כגון חוק הגנת הצרכן, התשמ"א - 1981 חוק התקנים, תשי"ג 1953, חוק התכנון והבניה, תשכ"ח - 1968, וחוקים נוספים.

5.2 חקיקה זו הינה רגולטיבית במהות, נועדה להתגבר על 'כשלי שוק' הקיימים בענף ולהבטיח את זכויותיו של הצרכן הישראלי, מול ספק השירותים והמוצרים לרבות בנית בנינים ומערכות תשתית.

5.3 כתוצאה מהסכם הקבע עם הרש"פ ויצירת מציאות כלכלית -מדינית חדשה, עלולים להיווצר כשלי שוק מיוחדים, שאותם לא צפה המחוקק בשעתו.

לדוגמא, אין ספק, כי בעת חקיקת חוק המכר (דירות), תשל"ג - 1973, לא צפה המחוקק את האפשרות כי את האחריות לטיב הבניה יקבל רוכש הדירה מאת קבלן זר, שמקום מושבו מעבר לגבול תחת ריבונות זרה, כאשר עקב כך יכולת האכיפה בפועל כלפיו - מוגבלת ביותר.

מן הראוי לציין, כי על פי המצב המשפטי הפורמלי, ניתן לכאורה לבצע פסקי דין שניתנו במדינת ישראל בשטחי הרש"פ, והדברים אף נקבעו במפורש בהסכם קהיר.

דא עקא, מהנסיון שהצטבר בפועל אין הצד הפלסטיני מיישם הוראות אלה. נושא זה נדון בהרחבה בהליך משפטי שהתנהל בבית הדין הארצי לעבודה, בדב"ע נה/3-218 **עלי איוב אל הדיה נגד שרפן דוד בע"מ** תקדין - ארצי כרך 96 (3) תשנ"ו תשנ"ז. בהליך זה, נבחנה השאלה האם מן הראוי לחייב את תושב הרש"פ אשר תבע מעסיק ישראלי בבית הדין לעבודה, בהפקדת ערובה להבטחת תשלום הוצאת הנתבע הישראלי, באשר נטען כי במידה ויפסקו הוצאות כנגד התובע (הפלסטיני), לא ינתן יהיה לאכוף את פסק הדין להוצאות בשטחי הרש"פ.

Z. KLEMENTYNOVSKI - R. STEIN & CO.
LAW OFFICES AND NOTARY

צ. קלמנטינובסקי - ר. שטיין ושות'
משרד עורכי-דין ונוטריון

לבקשת בית הדין הארצי לעבודה, נדרש היועץ המשפטי לממשלה להליך זה, וציין (כמצוטט על ידי בית הדין בפסק הדין), כי :

"עד היום אין הצד הפלסטיני מיישם את הוראות הסכם קהיר, ובנוסף לכך אף אם ייושמו הוראות ההסכם במלואן, אכיפה של פסק דין להוצאות שניתן בישראל, בשטחי עזה ויריחו, לא תהא כאכיפתם בישראל", ולפיכך הוסיף: "מן הראוי להתייחס אל תובעים תושבי עזה ויריחו כאל תושבי חוץ ולחייבם במתן ערובה להוצאות הנתבע".

לפיכך, לאור קשיי האכיפה ברש"פ, חייב בית הדין הארצי את התובע הפלסטיני, בהפקדת ערובה להבטחת הוצאות הנתבע הישראלי.

מקל וחומר נכונים הדברים, באשר המתדיין הזר הינו הנתבע התיק, ושוב מקל וחומר יהיו נכונים באשר לאכיפת פסק דין "לביצוע בעין" - דהיינו לחיוב הקבלן הזר אשר מתגורר ברש"פ, בביצוע תיקונים בדירות שבנה בישראל.

5.4 לפיכך, יש להבטיח, באמצעות תיקוני חקיקה, כי זכויותיו של הצרכן הישראל לא יפגעו - לא בכח ולא בפועל - כתוצאה מההסדרים הכלכליים אשר מחד יקנו לקבלן הפלסטיני נגישות לשוק הישראלי ואפשרות למכור דירות בישראל לקונים ישראליים, אך מאידך ילוו באי יכולת לאכוף את זכויות קונה הדירה, כנגדו.

5.5 להבטחת בדק ואחריות, יש לשקול תיקון חקיקה **בחוק המכר דירות, תשל"ג - 1973**, אשר יחייב קבלנים זרים הפועלים בישראל, ליתן ערובות לבדק, אם בדרך של מתן ערבויות בדק לרוכשים, אם בדרך של הפקדת ערבויות בדק במשרד ממשלתי או בהתאחדות הקבלנים, אם בדרך של מתן ערובות אחרות.

5.6 ב**חוק המכר (דירות) (הבטחת השקעות של רוכשי דירות), התשל"ה - 1974** הקובע את החובה להבטיח את כספו של רוכש דירה, יש לשקול לתקן את החוק באופן שבו "בנק" לענין החלופות הפיננסית (ערבות חוק מכר) יוגדר כבנק ישראלי, או בנק אחר שיקבע על ידי השר בתקנות. זאת לצורך הבטחת הצרכן הישראלי מפני קבלת ערבויות בנקאיות מפוקפקות, המוצאות על ידי בנקים אחרים, וספק אם יכובדו, כפי הנורמות המקובלות בבנקאות הישראלית.

<u>סיום</u>

6. לסיום מן הראוי להדגיש, כי נספח זה עוסק רק בעקרונות לפעולה. לכשיתגבשו עקרונות כלכליים/מסחריים ספציפיים של הסכם הסחר , יהיה צורך, בהתאמה, לפרוט עקרונות אלה לכללים משפטיים פרטניים, ולפיכך להוסיף ולגבש כללים משפטיים בחוקים ספציפיים, כל חוק בנושאים הנדונים באותו חוק.

בכבוד רב,

רפאל שטיין, עו"ד
הדר טל, עו"ד

צ. קלמנטינובסקי - ר. שטיין ושות'

CAPS

משרד ראש הממשלה
מנהלת המשא ומתן
-שמור-

כ"ט סיון, תש"ס
2 יולי, 2000

רמ"ט ראה"מ ושהב"ט
מנכ"ל מ' ראה"מ
מנכ"ל מ' האוצר
מנכ"ל מ' התשתיות
יועץ מדיני לראה"מ
מזכ"ץ ראה"מ ושהב"ט
14
302

הנדון: השת"פ הכלכלי, חברתי ותרבותי עם הי"פ

1. מצ"ב נמ"ט ראשוני שהוכן ע"י המשרד לשת"פ איזורי לקראת מו"מ בנושא במעלה הדרך.

2. הנמ"ט נכתב ברזולוציה של עקרונות לשלושה תחומים:
   א. שת"פ איזורי.
   ב. שת"פ מוניציפלי.
   ג. שת"פ NGO.

3. עבודה זו מתואמת עם נדבך פתוח מרחב הגבול במסגרת העמ"ט על ה"הפרדה".

בברכה,

שאול אריאלי
ר' מנהלת המו"מ

המשרד לשת"פ אזורי

השת"פ הכלכלי, חברתי ותרבותי

עם

הישות הפלשתינית

רפי בנבנשתי
02/07/00

הרקע

1. המגמה בעולם

- הגדלת הפתיחות (גלובליזציה) - שחרור תנועות סחורות, הון וכוח אדם
- הסקטור הפרטי מוביל הפיתוח והסקטור הציבורי מכין תשתיות חוק, חינוך ותשתיות פיזיות (בחלק מהמקרים)

2. המגמה במזה"ת

- השתלבות איטית במגמה העולמית תוך קיום קרב בלימה של הכוחות השמרנים

- תהליך השלום מסייע למדינות האזור בתהליך הפתיחות (סיוע הדדי), הצמיחה ועליית רמת החיים על ידי הקטנת המתח הבטחוני והמשאבים הדרושים להחזקתו

- תהליך השלום הוא חיוני לביסוס מעמדה של ישראל במזה"ת, השגת צמיחה כלכלית, הקטנת פערים חברתיים ופתרון בעיות חברתיות תרבותיות בחברה הישראלית

- יש גורמים חזקים המנסים לבלום תהליך הנירמול מסיבות דתיות, פוליטיות וחברתיות משני צידי הגבולות

- השת"פ הוא מאמץ של המנהיגות לשלב תהליך כלכלי עם התהליך המדיני. הוא נועד להצביע על "פירות השלום" וליצור תשתית של אינטרסים הדדיים לקיום השלום

- קידום השת"פ הוא מאבק
  - בגורמים הבולמים אותו כדי לבלום את תהליך השלום
  - בספקנים הרואים בשלום שלב מעבר למלחמה הבאה
  - בגורמים כלכליים וחברתיים החוששים מהצלחת השת"פ ואבדן השליטה בשוק
- יש עדויות על תהליכי שת"פ ספונטניים של הסקטור הפרטי (השקעות בירדן ומצרים, אזורי תעשיה וסחר בקו התפר, שוק משותף של חבילות תיירות, העברת ידע חקלאי ושת"פ של ארגונים לא ממשלתיים (NGO)

3. השת"פ עם הפלשתינים

- **<u>הגישה הפלשתינית מעורבת</u>**. המטרה המיידית היא הקמת מדינה עצמאית עם שליטה בגבולות ברורים, מדיניות כלכלית עצמאית וכל סממני הריבונות.
- הגישה השלטת:
  - הקטנת התלות בישראל על ידי החלפת יבוא והגדלת הקשרים עם מדינות ערב
  - הקמת תשתית לאומית בכל התחומים
  - הגבלת מעורבות ישראלית במשק הפלשתיני והגנה על היצור המקומי

- הקמת תעשיות עתירות מדע ליצוא עם כל גורם אפשרי

- יחד עם זאת יש הכרה עמוקה במרכזיות המשק הישראלי בכלכלתם והערכה רבה לעוצמת הסקטור הפרטי בישראל. הם מכירים בחשיבות היוזמה, ההון, הידע, והנגישות לשווקים של ישראל לפיתוח הכלכלי של הישות הפלשתינית. כמו כן קיימת הכרה שכתוצאה ממגבלת מקורות והצורך להשיג יתרונות לגודל יש חשיבות לשת"פ עם ישראל

- **<u>הגישה הישראלית אף היא מעורבת</u>**. המטרות המידיות הן:

- שמירה על שליטה בנושאי תשתית הנתפשים כאסטרטגיים כגון מים

- סיוע לגורמים בישראל לשמר את מעמדם בשוק הפלשתיני

- הגנה על היצור המקומי
- הגנה בפני פגיעה באיכות הסביבה ממפגעים מעבר לקו התפר
- יחד עם זאת יש הכרה בחשיבות תהליך השלום הכלכלי וסיוע לצמיחה ועליית רמת החיים של הפלשתינים. "השכן השבע". יש הרואים יתרון בהגברת התחרותיות במשק הישראלי כתוצאה מיצירת מקורות אספקה חדשים במשק הפלשתיני
- יש כוחות חזקים משני הצדדים (ארגונים לא ממשלתיים) המנסים להגביר ההבנה ושת"פ על ידי פעילות עיסקית, חברתית ותרבותית של אנשים לאנשים

4. מאפיינים כלליים של השת"פ

- השת"פ צריך לענות על צרכי שני הצדדים (סכום חיובי). סוגי המצבים יכולים להיות: יתרון לשני הצדדים (WIN – WIN) – מפעלי ביוב משותפים בקו התפר או מפעלי תעשייה ישראלים ליצוא בשטחי הרשות ; יתרון לצד אחד כאשר הצד השני לא ניזוק (WIN - ZERO) אזורי תעשיה בקו התפר; או יתרון גדול לצד אחד ונזק קטן לצד השני – אזורי סחר ושרותים בקו התפר

- פתרונות יצירתיים לנוכח לחץ של קבוצות אינטרסים של שמירה על מעמד בשווקים (תעשיינים, חקלאים, תשתיות, סוחרים)

- מציאת פתרונות לבעיות התשתית החוקית המסדירה את חיי העולם העיסקי בשטחי הישות הפלשתינית. כפי שזה היום התשתית החוקית

לקויה ויש ספק לגבי שלטון החוק. אנשי עסקים ישראלים נרתעים משת"פ (כולל באזורי התפר) בגלל הסיכון הגבוה

5. צורות השת"פ

- **<u>שת"פ חוצה גבולות</u>** הוא הקמת מיזמים בתחומי הישות הפלשתינית או בישראל (על ידי הפלשתינים). שיתוף הפעולה יוסדר ויושפע על ידי הסכמים בילטרליים כמו: סחר, השקעות, כוח אדם, שמירה על זכויות קנין, מיסוי ישיר ועקיף, הסכמים ענפיים ספציפיים וכו'.
- גורמים המשפיעים על השת"פ: הם מספר המעברים, אופיים ומיקומם, הסדרי מעבר סחורות ואנשים, הסדרי התחבורה, הסדרים חוקיים המאפשרים ומבטיחים הפעילות הכלכלית, הסדרי מימון וביטוח סיכונים פוליטיים ומסחריים וכו'.

- **<u>ככול שההסדרים והתנאים החוקיים והמינהליים יגבילו הפעילות והתנועה כך יהיה תמריץ גדול יותר להקים אזורי שת"פ בקו התפר.</u>**

- **<u>השת"פ במרחב התפר</u>** מבוסס על ההנחה שיהיה נוח לשני הצדדים לרכז השת"פ בקו התפר. לצד הפלשתיני יאפשר הדבר לבודד השת"פ (גם מנוחיות פוליטית) באזורים מסוימים בהם ינתנו זכויות ושירותים מיוחדים ליזמים (מיסוי, הגנה בפני בירוקרטיה, ביטחון, תשתיות אמינות) ויתקיימו הסדרים מיוחדים לתנועת סחורות ואנשים. לצד הישראלי השטח המיוחד יאפשר הקטנת הסיכון וגישה קלה יותר

- הפעילות בקו התפר תהיה מבוססת על יצירת אזורי מפגש מיוחדים הצמודים לגבול. האזורים יהיו פתוחים לשני הצדדים, אך לא יהיה ניתן לעבור מתוכם לשטחי ישראל או הישות הפלשתינית אלא רק

לחזור למקום המוצא. הפעילות באזורים אכולה להיות תעשייתית (כולל אזורי חציבה וכריה), מסחרית, מתן שירותים (מוסכים, בתי מלאכה, מרכזים רפואיים מסחריים, אטרקציות תיירותיות, מתנסי"ם וכו'). האזורים ינוהלו על ידי הסקטור הפרטי. לכל אחת מהפעילויות יהיו הסדרים ספציפיים כולל סידורי ביטחון.

. מקרים מיוחדים של פעילות בקו התפר הם:

. שת"פ משולש עם ירדן ומצרים. המקומות הסבירים להתפתחות הם: עמק הירדן וצפון ים המלח ביחד עם הירדנים. אזור רפיח - דהנייה עם המצרים. בעמק הירדן תהיה פעילות בתחום שימור הסביבה, אזורי תעשייה ולוגיסטיקה במעברים (דמיה ואלנבי) ותיירות. באזור ים המלח יתקיים שת"פ בתחום שימור הסביבה ותיירות

- שת"פ הנובע ממשאבי טבע כמו אזורי כריה וחציבה, פארקים, גנים ושמורות טבע, ואתרים בעלי חשיבות דתית או אתרים ארכיאולוגיים
- יהיה צורך בתיאום תוכניות פיזיות לתשתיות ושימושי קרקע. תמ"א 35 אינה מתואמת עם הישות הפלשתינית

- **<u>השת"פ בתחום התשתיות</u>** ימשיך להתפתח בצורות הבאות:

- המשך ייצור והספקה ישראלית לישות הפלשתינית. מועדפת על ידי הישראלים. הפלשתינים מעוניינים להקים מערכות נפרדות.

- חיבור רשתות ותנועת שרותים מצד לצד. אפשרות סבירה גם לאור תוכניות חיבור רשתות במזה"ת ויבוא שירותים לישראל (חשמל וגז)

- מפעלים משותפים (התפלה וחשמל). סבירות נמוכה בגלל נטייה להפרדת תשתיות. אפשרי בביוב ואשפה וסילוק מפגעים סביבתיים

- השת"פ במים מקרה מיוחד בגלל האקויפר המשותף ודיון על זכויות מים

- בנמלים ושדות תעופה עשוי להתקיים הסכם שת"פ בגלל הצרכים של שני הצדדים (קירבה לאזורי מגורים). מקרה מיוחד הוא אפשרות לשדה משותף בעטרות ובצפון ים המלח - יריחו

- **<u>השת"פ המוניציפלי</u>** יווצר כתוצאה מהקרבה הגדולה של ישובים עירוניים משני צידי קו התפר. הצורות האפשריות לשת"פ יהיו מנגנונים לטיפול במפגעים סביבתיים, פיתוח תיירות אזורית ומתקני תיירות משותפים, אזורי מלאכה ושירותים עם פישפשי מעבר, מתנסי"ם ועידוד לפעילות אנשים לאנשים.

- **<u>השת"פ החברתי - תרבותי</u>** הוא חיוני להצלחת השלום וההשלמה. עיקר המאמץ הציבורי צריך להיות בהסרת המגבלות למפגשים ומגעים בין הצדדים ובהכנת תשתיות לקיומם. עידוד השת"פ על ידי הסכמים בין המדינות. בעיקרו חוצה גבולות, אבל יתכן באזורי התפר במתקנים כמו מתנסי"ם, מתקני ספורט ואולמות מופעים.

- השת"פ בתחום החינוך וההכשרה המקצועית יהיה בעיקרו חוצה גבולות ויתבצע על ידי מוסדות חינוך. בתחום ההכשרה המקצועית יתכן שת"פ בקו התפר באזורי תעשייה

- בתחום הרפואי בנוסף להסכמים בין המדינות קיימת אפשרות לשת"פ בקו התפר על ידי הקמת מרפאות, מאגרי מידע ויעוץ רפואי כמו מרכז סרטן, בתי חולים מיוחדים וכו'

- **<u>שת"פ של הארגונים הלא ממשלתיים (NGO)</u>** מתרחש כיום ספונטנית על ידי יותר מ – 200 ארגונים. העידוד לתחום יכול להיות בתקציבים ותשתיות.

לכבוד
מר עוזי כ ר ב

העתק: דינה ירום

הנדון: עמדת התאחדות התעשיינים ביחסי הסחר בין ישראל לרש"פ

1. כללי

התאחדות התעשיינים רואה חשיבות וכיעד אסטרטגי המשך קיום ופיתוח הקשרים הכלכליים עם הרש"פ. אין להגיע למצב של ניתוק כלכלי, שאינו לטובת אף אחד מן הצדדים.

לסקטור העסקי הישראלי אינטרסים חשובים בהמשך קיומו של סחר והשקעות, הזהה, למיטב ידיעתנו, לאינטרס של הסקטור העסקי הפלשתינאי. המשק הפלשתינאי יצטרך לאורך שנים רבות להתבסס לא רק על הביקוש הישראלי, אלא גם על התשתיות הרבות, ובמיוחד בתחום התעסוקה בישראל. לדעתנו על ההסכם הכלכלי להיות מבוסס על עקרונות גמישים ולא על מונחים קשוחים, הנגזרים מהגדרות בינלאומיות של הסכם אס"ח. מצב היחסים, הבדלי הכלכלות ותרבויות עסקיות דורש קיומם של כללים גמישים יותר מהסכמי אס"ח המקובלים. אנו חוזרים ומדגישים את החשיבות במעורבותנו בתהליך.

2 מוצרים רגישים

דאגתנו נתונה לשמירה המשך קיומם של תעשיות הנתונות למשטר החשיפה שרובן תעשיות מסורתיות עתירות עבודה ובחלקם הגדול מתבססים על מכירות לרש"פ. ביחס אליהן יש לדעתנו לחתור להסדר מיוחד כמפורט בסעיף ט' להלן.

3. להלן תנאים ליצירת אס"ח:

א. כללי סחר ואמנות בינלאומיות:

1) יישום כללי הסחר המקובלים מחייב צירוף רש"פ ל- WTO או לפחות ליישם בשלב מוקדם כללים אלה.

2) על הרש"פ לאמץ את אמנת המריפס.

3) יישום ההסכם יהיה הדרגתי ויקבעו אבני דרך ליישומו בהתאם להתנהגות ויישום ההחלטות.

4) יתוקן חוק המכרזים בישראל ויותאם למציאות, הנוצרת עם הפרדת השווקים.

5) יתוקן חוק ההיטלים בישראל באופן, שניתן יהיה ליישמו בתהליכים מהירים ונטל התקירה על הממונה.

6) כללי המקור בין הצדדים יתבססו על כללי המקור הפאן אירופאים תוך צבירת מקור מוטאלית בלפי מדינות שלישיות.

7) הסחר בין ישראל לרש"פ יהיה דינו כדין יצוא למדינה אחרת.

8) יבוטל חוק הסוכנים הפלשתינאי.

9) לא יופעלו סנקציות על מפעלים ברמת הגולן בסחר עם הרש"פ ולגביהם יחול דין אחד.

ב. ישוב סכסוכים:

1) הקמת בית משפט משותף לפתרון סכסוכים מסחריים אזרחיים ותחום יחסי עבודה.

2) יוקם מנגנון פיקוח קבוע לפתרון בעיות בין הפרט לממשל.

ג. סימני מסחר צרכנות:

1) ביטול חרם על סחורה ישראלית.

2) לא יופעלו צעדים אדמיניסטרטיביים, כגון הפקעות, מניעת שיווק מוצרים, הפעלת איומים ולחצים על צרכני תוצרת ישראל.

3) סימון המוצרים ייעשה על פי הדרישות המקומיות. אין לכפות על יצרנים סימון זהה בשני השווקים, אלא אם יוסכם על כך בין הצדדים.

4) הצדדים ינקטו בצעדים אפקטיביים כנגד זיופים, העתקות של מוצרים וסימני מסחר.

ד. מיסוי:

1) שיעורי המע"מ יהיו זהים.
2) שיעורי מס הקניה יותאמו.
3) מסי מעבר בגבולות אחידים.

ה. תקינה ביקורת איכות:

חתירה להרמוניזציה של תקינה. חובת עמידה בכללים על כל מוצרי היצוא מהרש"פ לישראל.

ו. השקעות:

1) זכאות לבעלות על חברות של 100%.

2) מניעת היטל מס ישראלי על פטור ממס ברשות.

3) חתימת אמנת כפל מס.

4) קביעת מס חברות דומה.

5) זכות מלאה להוצאת רווחים במטבע חוץ.

6) חברת בסס"ח תבטח השקעות ועסקות סחר עם הפלשתינאים.

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ז. קבלנות משנה:

הקלות על מעבר סחורות לעיבוד בקבלנות משנה ופטור ממכס או מסים על עבודה בקבלנות משנה.

ח. סחר בתפר:

הסחר בין ישראל לרש"פ בתפר הגבולות מוערך בלמעלה מ- 3 מיליארד ש"ח בשנה (על פי הערכות מתאם הפעולות בשטחים). על מנת למנוע פריצה ויחס מועדף יקבעו אותם כללי מעבר על רכש מקו התפר.

ט. קביעת הסדרים למניעת פגיעה במוצרים רגישים מפני יבוא מתחרה בלתי הוגן

במסגרת אס"ח ,יש לקבוע לגבי ענפים רגישים במיוחד ,שבמסגרת תוכנית החשיפה, תנאים בסיסיים ,למניעת הפגיעה כתוצאה מפערי מיסוי ותנאי יבוא העלולים לפגוע דווקא בענפים המסורתיים .אם כתוצאה מיבוא בתנאים עדיפים ברש"פ ואם מאובדן שוק חשוב .

אנו ערים לכך כי ,בתחומים שונים קיימים אינטרסים מנוגדים בין הצדדים ויש לנהל משא ומתן פרטני על כל ענף ובהשתתפותו ,בכדי להגיע להרכב מוצרים, בו לשני הצדדים יהיה מענה הולם.

הצעתנו היא, שבמוצרים רגישים תישמר רמת מכסים אחידה כלפי מדינות שלישיות כדי למנוע ניצול פערי מיסוי מה שמחייב גם הרמוניזציה בשאר המסים כגון מע"מ מסי קניה והיטלים שווה ערך למכס.

בין השווקים תתקיים תנועה חופשית של סחורות בתנאי עמידה בכללי המקור שיקבעו .מוצרים שאינם עומדים בכללי המקור ישלמו את מלא המכס במעברי הגבול אך תנועתם לא תוגבל ע"י מגבלות בלתי מכסיות אדמיניסטרטיביות להוציא צווים חוקים והראות בתחום התקינה ,הבריאות. הבטיחות .איכות הסביבה לגביהם יש לשאוף להרמוניזציה.

י. אכיפה:

1) כללי

תנאי המעבר במוצרים ושירותים יקבע כמו בכל תחנת גבול אחרת. המוצרים מתחייבים לעמוד בתחנות הביקורת, בתקנות המכס, תקני הבריאות, תקנים אחרים, איכות, בטיחות, מוצרים מסוכנים, איכות הסביבה, זכויות יוצרים.

2) בקרה בשלבי המעבר

לא יסגרו מעברים באמצעי לחץ. בתהליך המעבר עד לקיומו המלא של אס"ח יערכו בדיקות מדגמיות בתחנות הגבול על מוצר מיובא לישראל והמשתייך לאחד הענפים הרגישים. לגבי שאר המוצרים נדרשת עמידה בכללי המקור.

3) מוצרי טרנזיט

לגבי סחורות בטרנזיט, אלו יעברו בנהלים הרגילים הקיימים לגבי סחורות בטרנזיט.

4) אזורי סחר חופשי (בונפד)
על מנת להקל על מעבר הסחורות לשווקים המקומיים ניתן להקים אזורי סחר חופשי מרכזיים, מהם ניתן לשחרר טובין על פי הדרישות.

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Final Status Economic Arrangements

Israeli-Palestinian Economic Arrangements under a Permanent Status Agreement

February 23, 2000

TAX POLICY AND TAX ADMINISTRATION ISSUES IN THE WEST BANK AND GAZA: THE PRESENT AND THE FUTURE[1]

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I. INTRODUCTION

The signing of the Paris Protocol in 1994 defined, among other things, fiscal arrangements for Israel and the Palestinian Authority (PA) for the next five years. Over this interim period, the PA was constrained to focus its efforts more on improving tax administration rather than establishing an independent tax policy. The Protocol in practice defined a de facto customs union (CU) which included harmonization of trade and tax policies between the West Bank and Gaza (WBG) and Israel, and created a tight link between tax policy and trade policy. The PA has in effect inherited Israel's rather complex tax system, which along with improvements in tax administration, have successfully increased WBG's tax-GDP ratio from ⅓ of Israel's tax-GDP ratio in 1995 to ⅔ of Israel's tax-GDP ratio in 1998. Tax revenues in the WBG currently represent about 22 percent of GDP.[2] This is a relatively high tax burden for a low-income economy, as compared with an average of 12 percent for the Middle East region, although it is still 10 percentage points below that of Israel.[3]

Given the passage of the interim period, the existing tax policy, trade policy and tax administration are being revisited with an eye towards maintaining the current de facto CU, modifying it, or adopting a free trade area (FTA) agreement between Israel and the PA.[4] These trade regimes imply different tax policy regimes. This note describes tax policies and

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[1] The views expressed are those of the author and do not necessarily reflect those of the IMF.

[2] Over the same time period, Israel's tax-GDP ratio has been remarkably stable at around 32 percent.

[3] Israel's tax-GDP ratio is above the OECD average (30 percent), but is similar to that of United Kingdom and Norway. WBG's real per capita GDP in 1998 is estimated at US$1,322, slightly more than one-tenth of Israel's real per capita GDP. Beyond tax policy, the current high tax burden has also implications for expenditure policy, but an analysis of expenditure policy implications are beyond the scope of this note.

[4] A CU between member countries involves removing tariffs within the union, but maintaining common external tariffs against non-member countries. By contrast, an FTA allows each member to set its own external tariff policy. A common market, a long term goal of the EPS model, is a CU which allows for free mobility of factors of production between member countries. It is important to note that these are textbook definitions and the current CU has some elements of the textbook CU and FTA.

tax administration issues under three different trade regimes: the existing de facto CU, a pure FTA and a hybrid of the two, and **discusses what an ideal tax policy and tax administration** may look like for the near future of the WBG and compares this, to the extent possible, with the one proposed in the economic permanent status (EPS) model. **The EPS model proposes an FTA** which is a significant departure from the existing tax policy and tax administration. Under a pure FTA, each side can pursue an independent tax policy; and the PA's tax administration cannot piggy back on Israel's administration of the tax system as much as it has in the past five years. In fact, an FTA will make the administration of the tax system in WBG much more difficult for at least three reasons. First, large disparities in VAT rates between Israel and WBG, as called for in the EPS model, reduces the effectiveness of the existing revenue clearing arrangements which has worked smoothly for the past five years. Second, implementation of the rules of origin under an FTA will increase the cost of tax administration and will be a demanding requirement from both economies, but more from that of the WBG with its limited ability to increase value added components of imported goods. Third, the proposed tax administration in the EPS model increases incentives for smuggling and tax evasion, and more so, the wider are disparities in the VAT base, the VAT rate and rates on other indirect taxes.

Macro-based revenue sharing formulae are often advocated as solutions to address inequities in revenue sharing arrangements in a CU where one country collects most of the taxes. One such formula has been in operation for at least 30 years in the Southern Africa Customs Union (SACU). This note describes the SACU formula and elaborates on its relevance for the future economic status between the WBG and Israel. It concludes that such a formula is worth exploring so long as it supplements the existing revenue clearing system, takes into account the existing tax leakage, while being tailored to the specific needs of each economy. Annex I describes some specific comments on the EPS model. Annex II contains the SACU's formula.

II. Background

Challenges

The developments in tax policy and tax administration over the past five years pose several questions. How much higher can the WBG's tax-GDP ratio be in the near future, given that the tax burden has risen from a low base of 8 percent of GDP in 1994 to a relatively high tax burden of 22 percent in 1998? Is the existing tax policy of Israel, a high-income country, suitable for the WBG which is a low-income economy, and if not, to what extent the WBG's future tax policy can be different or de-linked from that of Israel? Can the PA's tax administration under an FTA deliver a revenue track record similar to the one under the current de facto CU? In addition, any possible future tax policy for the WBG has to address the revenue implications as well as the induced tax administration complications of further trade liberalization among the WBG and Israel and rest of the world, while at same time recognizing several factors associated with the existence of a government budget constraint.

and the past experience with the CU.[5] These factors are: (i) more than 60 percent of the WBG's revenues originate from revenue clearances with Israel; (ii) WBG is highly dependent on trade with Israel; (iii) the PA's expenditure-GDP ratio of about 25 percent is relatively high, and would have been higher had it not been for the provision of social services by the United Nations Relief and Works Agency and the NGOs; and (iv) with the anticipated declines in foreign aid in the medium term, there will be a pressing need on the part of the PA to finance any additional expenditures from domestic sources, absent any significant changes in expenditure policy.[6]

Although the Paris Protocol has added features to the WBG's economy that are distinct from many low-income countries, the economy still has many features which are characteristic of many low-income countries.[7] The WBG is a small, open economy with heavy reliance on indirect taxes, predominant presence of hard-to-tax sectors (e.g., agriculture and small, family-based enterprises)[8] and a tax administration that is in need of consolidating past gains and carrying out additional reforms. It is important for a new economy such as that of the WBG to start with a clean tax system.[9] Many countries painstakingly embark on designing and implementing tax systems and it takes many years of equally painstaking tax reforms in order to undo the past mistakes and bring the system closer to one based on the first principles of a good tax system. Looking ahead, it is important to note that **regardless of whether a CU, an FTA or a quasi version of the two is established among the WBG and Israel, the first principles of tax policy and tax administration would apply equally to both of these economies** although they may need to be tailored to the specific needs of each economy. This note attempts to incorporate the first principles in its discussion of a future tax policy and tax administration.

III. First Principles of a Tax System

The best tax systems are those that result in efficient allocation of resources, are equitable, and simple to administer in a way that raises the revenues needed for financing an appropriate level of government expenditures while promoting private sector investment. In

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[5] See "Revenue Implications of Trade Liberalization," IMF Occasional Paper No. 180 by Liam Ebrill, Janet Stotsky, and Reint Gropp (1999).

[6] These points are further elaborated in IMF, "*West Bank and Gaza: Economic Developments in the Five Years Since Oslo*," by P. Alonso-Gamo, M. Alier, T. Baunsgaard, and U. Erickson von Allmen (forthcoming).

[7] See Vito Tanzi, 1987, "Quantitative Characteristic of the Tax Systems of Developing Countries," in *The Theory of Taxation for Developing Countries*, ed. by David M.G. Newbery and Nicholas Herbert Stern (New York: Oxford University Press).

[8] Agriculture and fishing, along with wholesale and retail trade and services account for about 47 percent of GDP at factor cost (IMF, 1999).

[9] This note abstracts from the history of tax administration and tax policy prior to the 1994 Protocol.

practice, comprehensive tax and tariff policy reforms require some or all of the following elements:[10]

- A broad-based consumption tax, such as VAT, with a single rate in the 15–20 percent range, minimal exemptions and a threshold that excludes smaller businesses from taxation.
- A short list of excisable products, limited to petroleum products, tobacco, alcohol, and some luxury goods.
- Equal treatment of imports and competing domestically-produced goods vis-à-vis VATs and excise taxes so that no element of protection exists apart from the existence of import duties.
- Low average import tariff rate, with limited dispersion in the rate structure and avoidance of any export duties.
- A few brackets for personal income taxes, with a moderate top rate no higher than corporate income tax rate, limited personal exemptions, deductions and extensive final withholding; one moderate rate for corporate income tax with little tax incentives and uniform depreciation schedules across sectors.
- Decline in the importance of non-tax revenues, so long as these revenues reflect profits from central bank operations and surpluses from public enterprises;[11] and
- Simplification and modernization of tax and customs administration.

IV. Current Tax Policy Regime

Under the de facto CU since 1994, there is almost no scope for any deviation on rates and coverage of indirect taxes between the WBG and Israel. However, the rate and coverage of direct taxes can deviate. The new income tax law of WBG reduced the tax rates and the number of personal income tax brackets to four (5, 10, 15, and 20 percent).[12] By contrast, in 1998 Israel maintained a five periodic inflation-adjustable brackets of 10, 20, 30, 45, and

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[10] See George Abed and others, 1998, "Fiscal Reforms in Low-Income Countries: Experiences Under IMF-Supported Programs," IMF Occasional Paper No. 160; and Liam Ebrill, Janet Stotsky, and Reint Gropp, 1999, "Revenue Implications of Trade Liberalization," IMF Occasional Paper No. 180

[11] At present, profits from public enterprises in WBG are not included in non-tax revenues due to lack of information on the operation of these enterprises

[12] The new income tax law is based on the Jordanian tax laws which is in need of reform itself

50 percent on active personal income. In 1998, revenues from direct taxes in WBG amounted to 10 percent of tax revenues as compared with about 50 percent in Israel.

The Paris Protocol established a revenue clearance system which allocates revenues from an agreed pool of taxes between the PA and Israel. The system has been working rather smoothly since it was established in 1994. Revenues from direct taxes are allocated according to the following formula. Of the total revenue raised from income taxes on Palestinians working in Israel, 75 percent is transferred by Israel to the PA.[13] The lower than 100 percent allocation is based on the argument that Palestinian workers need to pay for social services they consume in Israel and the use of infrastructure. Revenues from indirect taxes are allocated according to the destination principle. Indirect tax revenues (i.e., VAT, custom duties and the so-called purchase tax)[14] on goods that are directly imported to WBG are all transferred to the PA. The allocation is based on actual transactions, which require import declaration forms, rather than any macro formula. However, revenues from customs and purchase taxes on indirect imports via Israel and on purchase taxes on Israeli goods exported to WBG are not transferred to the PA. Finally, VAT revenues are allocated between the PA and Israeli taxing authorities using the VAT invoice system. The invoice-based system has apparently contributed greatly to the buoyancy of VAT revenues and its success in the WBG. The current VAT rate is set at 17 percent in both WBG and Israel with some standard exemptions. Under the Paris Protocol, differential VAT rates (a maximum of 2 percentage points lower than the VAT in Israel) were allowed, but the PA never exercised this option.

The Protocol allowed some autonomy to the PA over tax and trade policy by allowing it to set the rates of customs and other charges on imports of specified quantities referred to in two lists, A1 (30 items), A2 (23 items) and with no restrictions on quantities in list B (various specified tools and equipment). The quantities from lists A1 and A2 are determined according to Palestinian "market needs," and for any quantities exceeding the agreed quota the duties are set at the Israeli tariffs. Regarding standards and licensing, Israeli import policy applies to all PA imports, except for the quantities agreed to in lists A1 and A2.

V. Tax Policy Under a De Facto Customs Union

Tax policy under a CU is relatively straightforward as it has been practiced in a de facto CU between WBG and Israel since the Paris Protocol. Tax policy under a de facto CU calls for: (i) harmonization of indirect tax rates so that imported goods from one economy do not get exported back to same economy which has a lower rate; (ii) granting a limited autonomy in

[13] In contrast, 100 percent of health fees are transferred to the PA. Revenues from this source comprise about 4 percent of tax revenues.

[14] A purchase tax is imposed on the wholesale price of selected final consumer goods (imported or locally produced) such as motor vehicles, limited raw materials and intermediate goods. It ranges from 5 to 95 percent. In Israel, revenue yield from this tax typically exceeds that from excise taxes.

setting external tariff policy, thus coming close to a quasi-FTA; (iii) disengagement in harmful (direct) tax competition whereby one tax jurisdiction offers incentives to attract owners of factor of production from another, thus leading to the erosion of the tax base.[15] As the first best solution, evaluation of any proposed future tax policy under (i) through (iii) should be based on the first principles of good tax system that have been discussed previously, an approach that is adopted in this note, to the extent that is possible.

As Israel has low import tariff rates, is a participant in several FTAs (EU, EFTA, United States) and has trade agreements with other countries (Canada, the Czech Republic, Hungary, Poland, the Slovak Republic and Turkey), it makes sense for the PA's future tax policy to continue with these low rates and not to engage in protectionist policies. However, continuation of the existing policy does not imply that a CU will necessarily tie the hands of the PA. In a quasi-CU or quasi-FTA for the future, the PA does not have to perfectly harmonize its rates on all types of indirect taxes that prevail in Israel such as the relatively high purchase taxes and the high TAMA mark-ups; cross-subsidy is possible as explained below. In addition, these taxes and associated mark ups, that have been developed over an extended period of time and serve perhaps particular lobby groups, may fulfill a useful public policy role in Israel, but it is not clear if they do so in the WBG. In such cases, negotiations and coordination of tax policies will pay off when, for example, harmonization of a higher tax rate on one good can be agreed upon in return for harmonization at a lower rate on another. However, in cases where smuggling of certain goods (e.g., used cars) is a real possibility **and** involves a large revenue loss, harmonization may be the only option. The existing large cost differentials between and among various part of the WBG and Israel means that tax rates do not need to be harmonized so long as these differentials do not exceed cost differentials and tax administration costs of maintaining different rates on the same goods do not vary across regions. Otherwise, there will still be incentives for smuggling and tax evasion.

Differential VAT rates (a maximum of 2 percentage points lower than the VAT in Israel) were allowed under the Paris Protocol although never implemented; the differential can still persist or become larger under a future tax policy in a CU. But again it makes sense to have a single VAT rate with the same exemptions in the CU on the grounds of simplicity, tax coordination, and ease of revenue clearance and adoption of a possible macro-based revenue sharing formula. However, the EPS model proposes different VAT rates.

As regards granting the PA a limited autonomy in setting external tariff policy via the three lists of exempted goods, clearly the past experience with these lists suggests room for reform. Areas for reform include: enlarging, and implementing the list; updating it, and negotiating the magnitude of exemptions.

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[15] A CU does not require harmonization of direct tax rates. In a common market, which is the future model proposed under the EPS model, tax harmonization will occur due to mobility of factors of production.

Finally, harmful direct tax competition can in theory occur, but may not matter in practice, given the presence of other barriers such as large regional cost differentials, language, religion, lack of mobility and presence of non-Palestinian immigrant workers in Israel. Tax competition will become a problem, however, in the longer term when the two economies are more similar.

VI. Tax Policy in a Pure Free Trade Area Arrangement

Under a pure FTA, the PA will have an independent tax policy which requires establishing customs borders, adopting rules of origin; VAT will no longer be collected at origin; exports to each country will be zero-rated and VAT rates can differ, with the differentials being even larger than the 2 percentage points allowed under the Protocol. There will be no tax leakage under a pure FTA, given a well-enforced rule of origin, whereas in a CU the PA could not recover revenues from customs and purchase taxes on indirect imports via Israel and on purchase taxes on Israeli goods exported to WBG. In addition, no macro-based revenue sharing formula is needed as the necessary documentation exist which can be used to apportion revenues. Establishment of a pure FTA also requires the PA to take over all the tax and customs administration which will increase the costs of adopting an FTA. Under a pure FTA domestic lobbying would be much stronger than under a CU, and can push for highly projectionist policies, as has been the case in many countries. This will undoubtedly elicit rent-seeking behavior, will contribute to poor governance which will ultimately undermine economic development.

VII. Macro-based Revenue Sharing Formula

The existing inequities (the tax leakage) in revenue clearance system, as manifested in non-transfer of revenues from customs and purchase taxes on indirect imports via Israel and from purchase tax on Israeli goods exported to WBG, have been in effect over the past five years. **Article B4.3 of the EPS model is consistent with this view**.[16] The tax leakage is in fact a reflection of an incomplete design of the fiscal arrangement of the 1994 Protocol whereby the choice of taxes to harmonize and the rates were agreed upon, but not the equally important question of the tax base.[17]

Given the past experience with revenue clearance arrangement, there seems to be a need to compensate the PA for opening its markets to Israel who is in charge of designing tax policy and collecting most taxes under the current regime. Similar concerns have been raised in

[16] According to this article, "The Sides shall agree upon detailed mechanisms for the clearances mentioned in this Article."

[17] The tax base is explicitly taken into account in the SACU revenue sharing formula as shown later in the text; see also Annex II.

Southern Africa Customs Union (SACU) and have been factored into the formula.[18] SACU has been using a macro-based revenue sharing formula for at least the past 30 years. The formula has gone through many revisions. Annex II describes the formula in detail as currently practiced in the SACU. SACU has features which are similar to the present Israeli-PA de facto CU. These are: (i) the presence of a dominant player who collects and manages most of the taxes; (ii) different levels of economic development among the member countries; (iii) a significant number of workers from one country (e.g., Lesotho) working in another (e.g., South Africa);[19] and (iv) high dependence on trade with South Africa. The formula also compensates the smaller poorer economies for opening up their markets to a richer country (South Africa); Annex II provides the details of the compensation factor.

A macro-based revenue-sharing formula along the lines of SACU's can be tailored to the specific needs of Israel and the PA. In particular,

- The formula should be seen as a supplement to the existing revenue clearing system and not a replacement. Abandonment of the existing revenue clearing system, based on invoices and documentation, will be damaging to the current and future economic status of the PA.

- The formula needs to recover as close as possible the revenue forgone by the PA through the tax leakage while perhaps allowing for a compensation to Israel to cover the cost of trade deflection that will result from an expanded lists of exempted goods, if and when, the latter become operational. The revenue base for the formula should include sources of the tax leakage (i.e., revenues from the purchase tax and customs tariffs on indirect imports via Israel and purchase tax on Israeli goods exported to the WBG).

- A compensation factor needs to be calculated for the WBG and Israel.

Formula-based transfers are not without problems, but are routinely practiced in one form or another in countries with a federal or decentralized structure (i.e., the so-called equalization transfers between a rich and poor province within a country) and in other CU such as the SACU as indicated already. The implementation of such transfers should be much easier than in the past, given the range of technical assistance provided to the PA in support of institution building, the working of the existing revenue clearing system, and above all improvement in collection of statistics and trade flows needed for a macro-based formula. Formula-based transfers are also preferable to awarding import licenses to a selected few as they avoid rent seeking and inequities.

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[18] SACU has been in existence since 1910. Members of the SACU are South Africa, Namibia, Lesotho, Botswana and Swaziland. Namibia was not a member until early 1990s.

[19] In 1998/99, remittances of Lesotho contract workers amounted to 18 percent of GNP.

VIII. Discussion

It is difficult to compare revenue implications of the existing de facto CU with that of a pure FTA as it depends on the relative strength of the implied trade creation and trade diversion and the exact departures from textbook definitions of a pure CU and a pure FTA. However, it is perhaps safe to say that there will be an initial revenue shortfall under a de facto FTA as the PA will be in charge of collecting taxes and monitoring tax administration.[20] Of course, this will become less of a problem as the tax administration in the WBG improves over time. To counteract this, there would be a revenue increase due to the operation of a macro-based revenue sharing formula which calls for Israel to increase fiscal transfers to the PA. Therefore, the net revenue effect is uncertain.

The EPS model proposes an FTA as the future economic arrangement. **The tax administration proposed under the EPS model complicates the existing tax administration in several ways.**

- Different and large disparities in VAT rates for the WBG and Israel, as proposed in the EPS model (between 12 percent and 22 percent), would undermine the existing revenue clearing arrangements. Different VAT rates increase the compliance cost of comparing VAT invoices, VAT refunds, and decrease the efficiency of a complementary macro-based revenue sharing formula. In fact, the success of the revenue clearing arrangements over the past five years is in part due to the simplicity of having identical VAT rates and perhaps for this reason the PA decided not to lower its VAT rate despite the fact that it was allowed to do so (by a maximum of 2 percentage points) under the 1994 Protocol.

- Not only VAT rates, but also the **VAT base** is an important issue for the future economic arrangement between the two entities. The EPS model is silent on this point. Significant tax administration costs will arise if the VAT base is not the same between the two entities and/or the list of VAT-exempt goods differ among the two.

- Agreeing on and implementing rules of origin will prove difficult in an FTA, given the PA's limited capacity to increase value added components of imported goods. This factor hampers customs administration and increases transaction costs whereas no rules of origin is needed in a de facto CU. In fact, the lax enforcement of rules of origin, despite its importance in the 1994 Protocol, is an important cause of the tax leakage in the first place.

- The proposed tax administration in the EPS model creates incentives for smuggling and tax evasion Large differential VAT rates compound this problem even further.

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[20] Custom revenues can fall permanently if exemptions are broadened permanently which is a real possibility under an FTA.

- Lack of a unified customs administration authority, which is the case under the EPS model, increases the costs of collecting taxes and can have adverse revenue consequences. The establishment of the customs administration in the West Bank as proposed in the EPS model is difficult as it is a patchwork of three areas: full Israeli control, shared control and full Palestinian control.[21] To overcome problems arising from having these three layers of customs administration (e.g., disputes arising from valuation or classification of goods), the EPS model proposes complicated procedures for their resolution. These matters are discussed in Article B5 of the EPS model. The considerable amount of space given to dispute resolutions in Article B5 of the EPS model is a reflection of the unease, complexity, and high costs of not having a unified tax administration authority.

Adopting an FTA at present represents the largest departure from the past five years, and will require a lengthy transition period. The transition period is needed for establishing mechanisms for establishing rules of origin, new tax laws, and a supporting tax administration. The EPS model is silent on the exact modalities of such a transition, and leaves this issue to future work program of both sides.[22]

The foregoing arguments have established why a future tax policy and tax administration regime that is least disruptive to the functioning of the economy of the WBG is indeed a tax policy and tax administration regime under a modified de facto customs union rather than an FTA.[23] However, this thinking should be guided by the first principles of tax system and appropriately modified to take into account the experiences of the past five years with the de facto CU and the Israeli tax structure. This entails:

- negotiations over enlarging the list of exempted goods (A1, A2 and B), increasing the quantities of the goods on the list while making sure these lists are operational, in contrast to experiences of the past five years;

- moving away from heavy reliance on distortionary indirect taxes and towards direct taxes. This can be best carried out by promoting private sector investment that generates tax revenues rather than a large, inefficient public sector bureaucracy which absorbs a large share of tax revenues;

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[21] The establishment of a customs administration is not particularly difficult in Gaza Strip as it is already operational. Taxes are collected at entry points, through the so-called I-invoices for the VAT clearing system. The Gaza Strip port facility, as foreseen in the modified Wye River agreement, would also require a separate customs organization.

[22] The limited discussion of the transition period is contained in Chapter N of the EPS model.

[23] This conclusion is also based on the fiscal costs of an FTA relative to CU as contained in the trade policy note.

- revisiting the 75 percent rule for allocation of income taxes to the PA, based in part on the existence of a large range of social services that have been provided in the WBG by various agencies of the UN and NGOs;

- fiscal transfers from Israel to WBG based on some agreed macro-based revenue sharing formulae which does not undermine the existing revenue clearing system; and

- revisiting and broadening the agreed pool of taxes, an element of the Protocol, which will be an input to the macro-based revenue sharing formula.

The above tax policy needs to be supported by a tax administration which strengthens it even further. The consolidation of the past gains in tax administration and effective use of technical assistance would go a long way towards achieving this aim.

ANNEX I. COMMENTS ON THE EPS MODEL

This annex provides some specific comments on the EPS model while Section VIII in the text includes the general comments.[24]

Transit and Clearance (Article B1)

- Section 1 mentions bonded warehouses as a transit point, but does not discuss any revenue leakage from these warehouses and/or how long goods are allowed to stay in transit. Artificial shortages can be created by the judicious use of length of time for storing goods in bonded warehouses.

Indirect taxation (Article B2)

- Section 2.a suggests that the list of 15–20 products include the purchase tax on durable goods. This proposal is not sound. It enlarges the range of goods subject to excise taxes to an unspecified, long list. Purchase tax is essentially an excise tax and at present varies from 5 percent to 95 percent (exclusive of the mark up TAMA which can raise the tax to over 120 percent). Apart from its unusually high rate, which may be suitable for supporting the Israeli economy's welfare aspirations and other considerations (e.g., lobbying) and may not desirable for a low income country such as West Bank and Gaza, this proposal violates the best principle of taxation system as it has broadened the range of excisable goods beyond their traditional list such as petroleum products, cigarettes and alcohol. These goods are considered excisable because of their negative externalities that they impose on the society. Some countries impose excises on motor vehicles that are considered luxury.

- Section 2.b is ambiguous as it entails two conflicting messages: that each side can and cannot change the purchase tax.

[24] The trade policy note includes additional comments on fiscal aspects of the EPS model.

ANNEX II. MACRO-BASED REVENUE SHARING FORMULA IN SACU[25]

The original formula negotiated in 1969 was as follows:

$$S = (A+B+C)/(D+E+F+G)*R*1.42$$

where

S = the amount allotted to each member country (excluding South Africa)
A = c.i.f. value (at border) of imports into the country irrespective or their origin, imports from common customs are thus included;
B = value of excisable and sales duty goods produced and consumed in the country.
C = excise and sales duty paid on B.
D = c.i.f. value of imports into the SACU;
E = Customs and sales duties paid on D;
F = value of excisable and sales duty goods produced and consumed in the SACU;
G = excise and sales duties paid on F.
R = total revenue pool of SACU which equals E+G;

The scale factor (1.42), which increases the share of the common pool to each SACU member (excluding South Africa) by 42 percent, or the so-called enhancement factor, takes into account the following factors: (i) the price raising effects on imports into the Union of a tariff system designed to protect South Africa producers; (ii) the industrial polarization effect resulting from the tendency of industries serving the Union to locate in South Africa; and (iii) the loss of fiscal discretion by member countries due to the fact that South Africa retained the right to determine tariff and excise rates for the entire SACU.

For the normalization purposes, the amount S accruing to each CU member (excluding South Africa) as calculated above can be compared with (A+B+C). Hence, S/(A+B+C) defines the rate of revenue from the pool for each member country.

The 1978 amendment clearly extended A to include all duties paid or payable on imports to each member (excluding South Africa). The 1969 agreement was not clear on this point although this factor was taken into account from 1969/70.

The agreement, as amended in 1978, provides for a stabilization factor which stabilizes revenues accrued to each member (excluding South Africa). The 1978 stabilization clause normalized the enhanced shares at 20 percent of (A+B+C) and provided for a lower and upper bound. The standard level for stabilization is set at 20 percent of (A+B+C). If the amount accruing to each member (excluding South Africa) is less (more) than 20 percent of (A+B+C), an amount equal to 50 percent of the difference between the calculated amount

[25] See World Trade Organization, 1998, *Trade Policy Review, SACU Volume 1, South Africa*

S and 20 percent of (A+B+C) is added (subtracted), provided that the resultant amount, which will be called S_s below satisfies the following:

$$S_s = S \pm 0.5 \left| S - 0.2*(A+B+C) \right| ; \text{ and } 0.17 \leq S_s/(A+B+C)) \leq 0.23$$

After calculation and taking into account constraints on the variables, the above formula becomes

$$S_s = 0.5*S + 0.1*(A+B+C)$$

with a floor of 17 percent of (A+B+C) and a ceiling of 23 percent of (A+B+C).

A Quantitative Assessment of Trade Options for the Palestinian Economy : Preliminary Results

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I. Introduction[1]

It is most likely that the choice of a future trade regime for the Palestinian economy will not only be determined by economic criteria. Political choices will necessarily affect the range of possible options. Moreover, the choice of a trade regime has serious implications for fiscal and labor policies, which calls for a comprehensive negotiating strategy. However, it remains useful to assess quantitatively the impact of different trade regimes *per se* in order to inform the debate, which revolves from the notions of integration to full separation with Israel, and to measure the implications of such policy choices.

The empirical literature on the subject remains poor. To our knowledge, only a few quantitative estimates of the impacts of different trade regimes have been produced (e.g. Arnon, 1996), and are generally outdated. The common argument raised not to perform such studies is the lack of accurate data (Kanafani, 1996), regarding notably trade flows between Israel and the Palestinian Economy. The Palestinian Central Bureau of Statistics (PCBS) is nevertheless producing since 1997 supply and use tables (SUT) which allow to a large extent to overcome this obstacle. This statistical exercise offers indeed a coherent photography of the different flows occurring among economic agents (producers, consumers, government, trade partners), by reconciling the supply and demand dimensions of the Palestinian economy in each market. It gives then the amount of export and imports by products that is consistent with the output in each activity and the consumption (intermediate and final) in each market. It permits as well to measure some of the very important trade distortions that affect the Palestinian economy.

We use the supply and use table for 1998 to calibrate an economy-wide computable general equilibrium (CGE) model designed to assess the impact of different trade policies. Such type of model has become a standard tool for integrated assessment of trade policies. Its main advantage lies in the possibility of combining detailed and consistent databases with a theoretically sound framework, able to capture feedback effects and market interdependencies, that may either mute or accentuate first-order effects.

This note is organized as follows. Section II describes briefly the current patterns of trade and trade policies in the Palestinian economy. Section III presents the CGE model. Section IV reports the results of the analysis and Section V concludes.

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[1] This note has benefited from substantive inputs from Claus Astrup and Rania Tijani. The views expressed here are those of the author and do not necessarily reflect those of the World Bank.

II. Trade Patterns.

The *de facto* customs union between Israel and the Palestinian economy implemented under the Paris Protocol[2] has probably led to a significant trade diversion in favor of Israel. According to PCBS and our own estimates, imports from Israel represent around 83 percent of total imports, the later amounting to a sum close to 3.1 billions of US dollars. Imports from Israel are exempted of duties. This means that import duties, around 0.3 billion, only apply to imports from third parties, and that the implicit average tariff rate for these imports exceeds 50 percent[3]. This is a first important source of distortion. A second one comes from the fact that the VAT collected on imports (from all origins) differs significantly from the one collected on domestic products. The implicit average effective VAT rate on imports is close to 10 percent, while the effective rate on domestic supply is close to 2 percent. These two policies tend to protect heavily some activities from competition with the rest of the world in general, and with third parties in particular. It equally means that it gives a strong relative preference to Israeli products vis-à-vis products from third parties.

A third source of distortion comes from the uneven tariff structure, that tends to protects some activities to the detriment of the others. A relevant index in that respect is the effective rate of protection (ERP), which captures the level of protection of a product, taking into consideration the nominal protection of inputs which are used to produce it. According to our computations, effective rates of protection range from 44 percent for equipment goods to –18 percent for transport activities. The use of the model will give us a more comprehensive assessment of the implied costs of such policy. It is however clear from these two extrema of the spectrum of ERPs that it does not favor investment and trade – two major ingredients for sustainable growth.

This situation is worsened by the high transaction costs faced by Palestinian producers, which reduce their incentives to trade with the rest of the world. Even if difficult to measure, it is likely that they are to a significant degree due to security clearances at Israeli borders, within West Bank, and between West Bank and Gaza. Other impediments include poor transport infrastructure and institutional deficiencies. A recent study estimated that transactions costs were, on average, 30 percent higher for Palestinian firms than for Israelis firms in 1998 (Federation of Palestinian Chambers of Commerce, 1999). According to the supply and use table for 1998, trade and transport costs add on average 35 percent to the cost of

[2] See European Commission (1999), and Alonso et al. (1999) for a general presentation and assessment of the Paris protocol.

[3] This figure of import duties also includes purchase taxes. These taxes, which are formally applicable to products from all origins (imported or domestically produced), play in reality the role of import duties since they are applied only on goods which are not produced in Israel.

domestic tradable goods. This has to be compared with a premium of 10 percent in the Rest of the Middle East region (GTAP, 1999).[4]

In total, exports amount only to a quarter of imports, and 95 percent of total exports are destined to the Israeli market. The structure of exports by products reflects the structure of comparative advantages under present circumstances. They mostly consist in crops, clothes, stones and basic metal products.

Finally, restrictions on trade with Arab countries for a given set of products (except those permitted in lists A1 and A2 of the interim agreement) are likely to represent a significant impediment to the expansion of imports and exports. While the modeling exercise performed below will give us a tentative assessment of the costs implied by both the current tariff policy and the high transaction costs, it is, on the contrary, very difficult in methodological terms to measure the implicit cost of a zero-quota policy.

III. The Model

The following paragraphs are not intended to describe precisely the characteristics of the model employed here, which contains around two thousand five hundred equations. The reader may refer for this purpose to Beghin et al. (1996) for a formal presentation of this class of models. They are rather intended to describe in non-mathematical terms its main hypotheses, mechanisms, and the statistical information used for the Palestinian economy.

In this model, prices are endogenous on each market (goods, factors) and equalize supplies and demands, so as to obtain the equilibrium. The equilibrium is general in the sense that it concerns all the markets simultaneously. For instance, a decrease in tariffs on imports will affect the demand of imports of both final and intermediate goods. This will in turn affect the supply of domestic goods, and the demand of factors in each activity. This will equally affect the price of goods and the income of households, and the budget of the government, who will need to find another source of financing.

The model uses the information contained in the supply and use table for 1998. It considers one representative Palestinian household and 31 economic sectors (cf. Annex 1 for the list of activities/products). The model distinguishes three trading partners for the Palestinian economy : Israel, the group of Members of the Arab League, and the Rest of the World (ROW). The basic features of the model are summarized below.

Supply is modeled using nested constant elasticity of substitution (CES) functions, which describe the substitution and complement relations among the various inputs. Producers are cost-minimizers and constant return to scale is assumed. Output results from two composite goods: intermediate consumption and value added. The intermediate aggregate is obtained by combining all products in fixed proportions (Leontieff structure). The value-added is then decomposed in two substitutable parts: labor and capital.

[4] This region includes Israel, Jordan, Lebanon, Syria and the Gulf countries.

which are both fully employed and perfectly mobile across sectors. Even if static, this model is therefore intended to capture long term allocative effects of different trade policies, since transition costs of reallocating productive factors are ignored.

Income from labor and capital is allocated to the representative household. Household demand is derived from maximizing the utility function, subject to the constraints of available income and consumer price vector. Household utility is a positive function of consumption of the various products and savings. Income elasticities are differentiated by product. The calibration of the model determines a per capita subsistence minimum for each product, which will be consumed whatever the price and the income of the households, while the remaining demand is derived through an optimization process. Government and investment demands are disaggregated in sectoral demands once their total value is determined according to fixed coefficient functions.

The model assumes imperfect substitution among goods originating from different geographical areas (the so-called Armington assumption). Import demand results from a CES aggregation function of domestic and imported goods. Export supply is symmetrically modeled as a constant elasticity of transformation function. Producers decide to allocate their output to domestic or foreign markets responding to relative prices. At the second stage, importers (exporters) choose the optimal choice of demand (supply) across regions, again as a function of the relative imports (exports) prices and the degree of substitution across regions. Substitution elasticity between domestic and imported products is set at 2.2, and at 5.0 between imported products according to origin (Israel, Arab countries or ROW). The elasticity of transformation between products intended for the domestic market and products for export is 5.0, and 8.0 between the different destinations for export products. A sensitivity analysis regarding these trade elasticities is presented in Annex 2.

The model considers the three policy instruments which have been mentioned previously: VAT on domestic supply (by product), VAT on imports (by product), tariff barriers (by product and by origin). Quotas of lists A1and A2 are not modeled, since it appears that they have not been binding until now. They have therefore no effects on the supply of imported goods.

Finally, several macro-economic constraints are introduced in this model. First, the small country assumption holds, the Palestinian economy being unable to change world prices; thus, its imports and exports prices are exogenous. Capital transfers are exogenous as well, and therefore the trade balance is fixed, so as to achieve the balance of payments equilibrium. Second, the model imposes a fixed government deficit, and fixed public expenditures, to reflect the government choices. Public receipts thus adjust endogenously in order to achieve the predetermined net government position, by shifting a lump-sum tax on households' gross income. Third, investment is determined by the availability of savings, the latter originating from households, government and abroad.

Two versions of the model are considered: one version with fixed (labor and capital) resources, and exogenous total factor productivity, and one version, in which (i) labor supply responds to real wages changes; (ii) capital supply depend on the rental rate; (iii) total factor productivity responds to trade intensity changes (Dessus et al, 1999). By considering that the amount of resources available in the Palestinian economy is fixed, the first version of the model therefore only looks at the impact of trade policies on the allocation of factors. It measures re-allocation gains / losses in comparison to an initial situation. The second one gives in addition an indication of what could be the magnitude of dynamic gains resulting from changes in trade policies.

Policy impacts are compared to the situation observed in 1998, in terms of real GDP, volume of exports, imports, and households' welfare. The chosen yardstick for welfare is the assessment of equivalent variation, which is the sum of two terms. The first one measures the gain (or the loss) of disposable income caused by the reform, and the second one measures the income needed after the reform to obtain the same level of utility as before the reform.

IV. Results

Rather than simulating plausible scenarios which - as a result of negotiations - would combine different measures with different relative weights, we prefer here to simulate single trade measures in order to isolate and understand better the effect of each of them. Several measures are considered here individually, but once combined with different weights, could represent different choices, from an improved customs' union to a full separation.

Scenario 1. Reduced Transaction costs.

It is assumed here that a relaxation of security controls translate into a 30 percent decrease in trade and transport margins. This effect is modeled by exogenously augmenting total factor productivity levels in trade and transport sectors by 30 percent. Table 1 reports the results, for the two versions of the model. The impact of the policy is measured by comparing columns 1 and 2.

Reduced transaction costs induce a significant increase in trade activity. Exports volume increase by 14 percent in the first version of the model, and imports by 3 percent. Real GDP increase by 5 percent, while gains in terms of welfare represent more than 6 percent of GDP in 1998. Beneficiary sectors are those who consume a lot of trade and transport services, notably vegetables and animal food, and more directly the trade and transport services who see their demand increasing. Israel also benefits from reduced transaction costs in the Palestinian economy. It may import cheaper products from Palestine and export more to Palestine, due to increased activity and demand.

The second version of the model tends to magnify the effects of the former. The increase in trade activity has the consequence to increase the total factor productivity level, and therefore the real remuneration of

capital and labor. This provides positive incentives to household to augment their investment and participation rates. Once accounted for such dynamic gains, real GDP is increased by 12 percent.

Scenario 2. Eliminating tax leakage.

It is often argued that tax leakage occurs, because of the existence of indirect imports via Israel. This costs the Palestinian Authority a substantial amount of revenues, estimated to represent 4 percent of GDP in 1997 (European Commission, 1999). We simulate here a transfer from Israel to the Palestinian Authority of an amount equivalent to 4 percent of GDP (around 150 millions of US dollars). Eliminating tax leakage has no impact on the relative price of goods, since indirect imports from Israel already include duties. The only impact of such measure is to relax the fiscal pressure on households, and the external constraint. Increased household's income translate into higher consumption, which in turn largely benefits to the Israeli exporters, given the current trade regime. The overall impact of such a transfer remains weak, because it does not modify the incentives of the agents to trade or invest more. Welfare gains remain close to the amount transfer to the Palestinian Authority.

Scenario 3. Tariffs set to zero for imports from all third parties.

This measure could be implemented within a Free Trade Area agreement, which would leave the possibility for the Palestinian Authority to define unilaterally its own trade policy with regard to third parties. However, associated costs of implementing a free trade area, such as establishing borders (physical or notional) and rules of origin, are not accounted for in this scenario. Neither is on the other hand accounted for the possibility for the Palestinian economy to trade with new partners.

This simulation has the interest of measuring by comparison the costs of granting preferences to Israeli imports. This cost appears to be extremely high, since a removal of these preferences translates in a 14 percent increase in real GDP in the first version of the model, and a 33 percent in the second. The removal of preferences has also a significant impact on household's welfare (an increase of 500 millions US dollars in the first model and 1272 in the second), despite the fact that households have to finance the loss of tariff revenue for the government.

Imports play a very important role in the Palestinian economy. Goods produced in Palestine have a high import content. Changing the structure of relative prices, notably for inputs, has therefore strong implications on the nature of comparative advantages and the specialization of the economy. This is reflected by the strong gain of competitiveness observed after the reform. The removal of protections induces significant reallocation gains, and increased openness of the economy. Exports volumes grow by more than 45 percent in the first model, and double in the second. Sectors that were previously the most protected tend to lose from the reform.

Removing tariffs for imports from third parties has negative consequences for Israel. Its exports to Palestine are reduced by 40 percent, despite the increase in the overall Palestinian demand for imported

goods. Given that total Israeli exports amounted to 21 billions of US dollars in 1998 (excluding exports to the Palestinian economy), it corresponds to a 4 percent decrease in total export receipts for Israel.

In the long run, increased productivity due to reallocation gains and increased outward orientation produce significant dynamic effects. Capital stock increases by 18 percent and total factor productivity level by more than 3 percent. Employment augments by 8 percent.

Scenario 4. Implementing rules of origin.

This scenario tries to assess what could be the macro-economic cost of implementing rules of origin, for example in the case of a FTA. We simulate this measure by augmenting the world price of imports from all origins by 5 percent, which is an estimated cost of obtaining the necessary documents to prove the origin of goods (Krueger, 1995). Despite the importance of imports for the Palestinian economy, this cost remain low, both in absolute terms and in comparison to the gains observed in scenario 3. Dynamic losses are limited, because the impact of implementing rules of origin on trade activity andallocative efficiency is marginal.

Scenario 5. Removal of preferences given to Palestinian Products in Israel.

We simulate here one possible outcome of a full separation scenario, that is the removal of preferences given to Palestinian Products in Israel. This measure is simulated by diminishing the price received by Palestinian exporters on the Israeli market, so as to leave unchanged the price of Palestinian goods inclusive of tariffs (which were previously equal to zero) in this market. This has the straightforward effect of reducing the access of Palestinian products to the Israeli market, and to close more generally the Palestinian economy to foreign trade. Exports volumes are diminished by two in the first model, and by three in the second model, due to an induced decrease in total factor productivity. Households face significant welfare losses, because real wages tend to decline and access to imported products diminishes. In the second model, welfare losses represent the equivalent of 17 percent of GDP in 1998. Israel is also losing in this scenario, since its exports to Palestine are reduced.

Scenario 6. Removal of preferences given to Israeli Products in Palestine.

This measure could accompany the former, as a measure of reciprocity, in the case of a full separation between the two economies. We simulate this measure, by imposing a tariff rate on imports from Israel similar to the one imposed on imports from third parties. This scenario produces interesting results. As a matter of fact, the harmonization of tariffs and its induced reduction in distortions between trade partners overcompensates the creation of a new distortion induced by increased protection from international competition. This means that preferences given to Israeli producers is probably the major distortion in the Palestinian economy, and explains why we observe in this scenario significant welfare gains.

This result must, nevertheless be qualified, for at least two reasons. First, because the measure simulated here has the consequence of closing the economy to global trade, which in turn has very negative

consequences in terms of dynamic gains. Observing the results of the second model confirms this statement: harmonizing preferences by raising tariffs for products from Israel has very different implications than harmonizing preferences by lowering tariffs for products from third parties. In the second case, which corresponds to Scenario 3, harmonizing tariffs produce significant dynamic gains (which may be measured by comparing the results of the two models for the same scenario). Second, because it is unlikely that this measure could be implemented without a reciprocal measure from Israel as simulated in Scenario 5, and its associated negative outcomes in terms of welfare and activity.

Table 1. Simulated Implications of Alternative Measures (US $ millions)

Scenarios	Ref	1	2	3	4	5	6
Fixed resources							
Real GDP	4232	4462	4246	4817	4167	4074	4423
Welfare gains	0	256	165	500	-158	-271	353
Exports volume	727	826	669	1059	692	344	361
Imports volume	3087	3186	3170	3418	2906	2681	2720
Imports from Israel	2568	2651	2638	1579	2417	2227	1448
Exports to Israel	685	775	630	1016	652	196	339
Trade Deficit with Israel	1883	1876	2008	563	1765	2031	1109
Endogenous resources							
Real GDP	4232	4741	4299	5608	4107	3558	4505
Welfare gains	0	527	215	1272	-243	-719	409
Exports volume	727	965	693	1621	650	190	410
Imports volume	3087	3324	3194	3981	2866	2537	2769
Imports from Israel	2568	2766	2659	1810	2384	2110	1601
exports to Israel	685	905	653	1568	612	110	384
Trade Deficit with Israel	1883	1861	2006	242	1772	2000	1217

Scenarios (each scenario is independent from the others) :

Ref - current situation in 1998 - Reference
1 - Reduced transaction costs.
2 - Net transfer of 150 US $ millions from Israel to the Palestinian Authority.
3 - Tariffs set to zero for imports from all third parties.
4 - Implementation of rules of origin
5 - Removal of preferences given to Palestinian Products in Israel.
6 - Removal of preferences given to Israeli Products in Palestine.

V. Concluding remarks.

Results of this modeling exercise suggest first of all that trade policy has major implications for the future of the Palestinian Economy. They also suggest that two dimensions matter most when it comes to the choice of a trade regime: transaction costs and preferences given to Israeli imports. The combination of these two effects lead to high trade diversion, which has a very important cost for the Palestinian economy. The choice of a trade regime should therefore aim in priority at reducing these transaction costs, and at harmonizing preferences. Harmonizing preferences by raising tariff on Israeli imports bears the risk of lowering the access to the Israeli market, and reduces dramatically long-term growth opportunities. It is most likely that harmonizing preferences by lowering tariffs on imports from third parties offers more opportunities.

As long as this trade regime departs itself from the regime put in place with the interim agreement, it may necessitate, however, to establish mechanisms to control the origin of goods, such as rules of origin and/or entry/customs stations to prevent Israel from trade deflection.[5] Two types of costs are associated with the establishment of such mechanisms: extra-administrative costs and higher transaction costs. Comparing these costs to the potential gains of granting more autonomy to the Palestinian Authority to define its own trade policy should be an important criterion of decision. Preliminary results obtained here suggest that implementing rules of origin does not entail major costs, in comparison of the gains. Estimating the other costs goes beyond the scope of this note, and will be the subject of future research studies.

The sharing of these costs between Israel and the Palestinian economy – or the acceptance by Israel of a certain level of trade deflection, is obviously another important dimension of the problem. This issue could be put on the agenda of future negotiations.

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Annex 1: List of Activities / Products

The model considers 31 activities and corresponding products.

1. Crops
2. Other Agriculture
3. Mining
4. Other Food Products
5. Olive Products
6. Vegetable Products
7. Meat and Dairy Products
8. Animal Food
9. Beverages and Tobacco
10. Textiles
11. Clothes
12. Leather Products
13. Wood Products
14. Paper Products
15. Printing
16. Chemical Products
17. Rubber
18. Non Metallic Products
19. Stones
20. Basic Metal Products
21. Equipment Goods
22. Furniture
23. Other Manufacture
24. Electricity and Water
25. Construction
26. Commerce
27. Tourism
28. Transport

29. Communication
30. Financial Services
31. Other Services

Annex 2. Sensitivity Analysis.

Four sets of simulation are presented here, to assess to what extent the choice of substitution elasticities affect the results in terms of welfare. In the first and second sets of simulation, we respectively double the import substitution elasticities and export transformation elasticities (both at the first and second levels). In the third and fourth sets of simulation, we divide respectively substitution and transformation elasticities by two (both at the first and second levels). The following table reports the results of these scenarios in terms of household's welfare, using the first version of the model with fixed resources. The last row of the table reminds the results obtained with medium elasticities.

Sensitivity Analysis. Trade Elasticities.

Scenarios	**Ref**	**1**	**2**	**3**	**4**	**5**	**6**
Set 1	0	260	987	165	-230	558	-154
Set 2	0	268	607	161	-230	299	-162
Set 3	0	254	221	166	-306	181	-162
Set 4	0	249	440	171	-318	407	-154
Medium	*0*	*256*	*500*	*165*	*-271*	*353*	*-158*

Tax Policy and Tax Administration Issues under Final Status

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Tax Policy

More flexibility could be allowed in the area of direct taxation than in the area of indirect taxation. Excise, VAT, and import duty rates and bases should be as close as possible between the PA and Israel. A customs union requires identical import duties (common external tariff) and preferably narrow bands with minimum rates for excises and VAT, a free trade area does not require a common external tariff but would also be facilitated by comparable levels of taxation. However, the de facto high integration of the PA and Israeli economies would in all circumstances benefit from a high level of commonality between the tax systems.

Taxes on income and property (or net wealth) may show many more differences between the PA and Israel. However, taxation of enterprise profits may require some degree of harmonization. Tax competition to attract investments from one another or from abroad may distort the allocative process. The so-called Ruding report discussed this issue for the EU and argued in favor of a certain degree of harmonization in the determination of the tax base, rate, and withholding on investment income. For instance, a first year full write-off of capital investments may cause substantial reallocation of investments. Relevant other issues are intercompany pricing and thin-cap arrangements.

The existence of borders and tax collection at borders would allow relatively larger differences between excises and VAT between the PA and Israel. It was particularly for this reason that in 1992, when administrative borders between the member EU countries were eliminated, the EU formulated the minimum and band rules for excises and VATs. However, fully operational administrative borders between the PA and Israel would require major resource investments in the PA.

An issue in many European countries is the taxation of border workers. Bilateral agreements between countries assign the taxing rights on income earned by the workers to either the work state or the residence state.

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[1] The views expressed here are those of the author and do not necessarily reflect those of the IMF.

Tax Administration

Close cooperation between the PA and Israeli administrations and identical indirect taxes have facilitated tax transfer and clearance systems between the PA and Israel. Although such systems could continue where differentiated tax levels exist, these differences would probably require supplementary collection points when goods move from one to the other. In theory, however, the importing or producing jurisdiction could collect tax at the rate of the other jurisdiction when the destination of the good in question were known.

A clearing system for VAT (and possibly excises) could continue to exist between jurisdictions that apply different levels of taxation. The jurisdiction of destination could give credit for the tax levied in the other Entity and claim compensation for the credits granted from the other jurisdiction. Importantly, this system has not (yet) been accepted in the EU, although the concept itself has not been rejected.

An urgently needed development in the PA is a reform of its revenue administrations to build a unified administration between West Bank and Gaza, and ideally integration between the income tax and VAT administration. Although the VAT in Israel is administered by the customs administration, it has become international practice to administer the income tax and VAT through a single domestic tax administration. In countries where this is the case, the customs administration collects VAT on imports and passes it on to the domestic administration.

TAX POLICY AND TAX ADMINISTRATION ISSUES IN THE WEST BANK AND GAZA: THE PRESENT AND THE FUTURE[1]

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I. INTRODUCTION

The signing of the Paris Protocol in 1994 defined, among other things, fiscal arrangements for Israel and the Palestinian Authority (PA) for the next five years. Over this interim period, the PA was constrained to focus its efforts more on improving tax administration rather than establishing an independent tax policy. The Protocol in practice defined a de facto customs union (CU) which included harmonization of trade and tax policies between the West Bank and Gaza (WBG) and Israel, and created a tight link between tax policy and trade policy. The PA has in effect inherited Israel's rather complex tax system, which along with improvements in tax administration, have successfully increased WBG's tax-GDP ratio from ⅓ of Israel's tax-GDP ratio in 1995 to ⅔ of Israel's tax-GDP ratio in 1998. Tax revenues in the WBG currently represent about 22 percent of GDP.[2] This is a relatively high tax burden for a low-income economy, as compared with an average of 12 percent for the Middle East region, although it is still 10 percentage points below that of Israel.[3]

Given the passage of the interim period, the existing tax policy, trade policy and tax administration are being revisited with an eye towards maintaining the current de facto CU, modifying it, or adopting a free trade area (FTA) agreement between Israel and the PA.[4] These trade regimes imply different tax policy regimes. This note describes tax policies and

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[1] The views expressed are those of the author and do not necessarily reflect those of the IMF.

[2] Over the same time period, Israel's tax-GDP ratio has been remarkably stable at around 32 percent.

[3] Israel's tax-GDP ratio is above the OECD average (30 percent), but is similar to that of United Kingdom and Norway. WBG's real per capita GDP in 1998 is estimated at US$1,322, slightly more than one-tenth of Israel's real per capita GDP. Beyond tax policy, the current high tax burden has also implications for expenditure policy, but an analysis of expenditure policy implications are beyond the scope of this note.

[4] A CU between member countries involves removing tariffs within the union, but maintaining common external tariffs against non-member countries. By contrast, an FTA allows each member to set its own external tariff policy. A common market, a long term goal of the EPS model, is a CU which allows for free mobility of factors of production between member countries. It is important to note that these are textbook definitions and the current CU has some elements of the textbook CU and FTA.

tax administration issues under three different trade regimes: the existing de facto CU, a pure FTA and a hybrid of the two, and **discusses what an ideal tax policy and tax administration** may look like for the near future of the WBG and compares this, to the extent possible, with the one proposed in the economic permanent status (EPS) model. **The EPS model proposes an FTA** which is a significant departure from the existing tax policy and tax administration. Under a pure FTA, each side can pursue an independent tax policy; and the PA's tax administration cannot piggy back on Israel's administration of the tax system as much as it has in the past five years. In fact, an FTA will make the administration of the tax system in WBG much more difficult for at least three reasons. First, large disparities in VAT rates between Israel and WBG, as called for in the EPS model, reduces the effectiveness of the existing revenue clearing arrangements which has worked smoothly for the past five years. Second, implementation of the rules of origin under an FTA will increase the cost of tax administration and will be a demanding requirement from both economies, but more from that of the WBG with its limited ability to increase value added components of imported goods. Third, the proposed tax administration in the EPS model increases incentives for smuggling and tax evasion, and more so, the wider are disparities in the VAT base, the VAT rate and rates on other indirect taxes.

Macro-based revenue sharing formulae are often advocated as solutions to address inequities in revenue sharing arrangements in a CU where one country collects most of the taxes. One such formula has been in operation for at least 30 years in the Southern Africa Customs Union (SACU). This note describes the SACU formula and elaborates on its relevance for the future economic status between the WBG and Israel. It concludes that such a formula is worth exploring so long as it supplements the existing revenue clearing system, takes into account the existing tax leakage, while being tailored to the specific needs of each economy. Annex I describes some specific comments on the EPS model. Annex II contains the SACU's formula.

II. Background

Challenges

The developments in tax policy and tax administration over the past five years pose several questions. How much higher can the WBG's tax-GDP ratio be in the near future, given that the tax burden has risen from a low base of 8 percent of GDP in 1994 to a relatively high tax burden of 22 percent in 1998? Is the existing tax policy of Israel, a high-income country, suitable for the WBG which is a low-income economy, and if not, to what extent the WBG's future tax policy can be different or de-linked from that of Israel? Can the PA's tax administration under an FTA deliver a revenue track record similar to the one under the current de facto CU? In addition, any possible future tax policy for the WBG has to address the revenue implications as well as the induced tax administration complications of further trade liberalization among the WBG and Israel and rest of the world, while at same time recognizing several factors associated with the existence of a government budget constraint.

and the past experience with the CU.[5] These factors are: (i) more than 60 percent of the WBG's revenues originate from revenue clearances with Israel; (ii) WBG is highly dependent on trade with Israel; (iii) the PA's expenditure-GDP ratio of about 25 percent is relatively high, and would have been higher had it not been for the provision of social services by the United Nations Relief and Works Agency and the NGOs; and (iv) with the anticipated declines in foreign aid in the medium term, there will be a pressing need on the part of the PA to finance any additional expenditures from domestic sources, absent any significant changes in expenditure policy.[6]

Although the Paris Protocol has added features to the WBG's economy that are distinct from many low-income countries, the economy still has many features which are characteristic of many low-income countries.[7] The WBG is a small, open economy with heavy reliance on indirect taxes, predominant presence of hard-to-tax sectors (e.g., agriculture and small, family-based enterprises)[8] and a tax administration that is in need of consolidating past gains and carrying out additional reforms. It is important for a new economy such as that of the WBG to start with a clean tax system.[9] Many countries painstakingly embark on designing and implementing tax systems and it takes many years of equally painstaking tax reforms in order to undo the past mistakes and bring the system closer to one based on the first principles of a good tax system. Looking ahead, it is important to note that **regardless of whether a CU, an FTA or a quasi version of the two is established among the WBG and Israel, the first principles of tax policy and tax administration would apply equally to both of these economies** although they may need to be tailored to the specific needs of each economy. This note attempts to incorporate the first principles in its discussion of a future tax policy and tax administration.

III. First Principles of a Tax System

The best tax systems are those that result in efficient allocation of resources, are equitable, and simple to administer in a way that raises the revenues needed for financing an appropriate level of government expenditures while promoting private sector investment. In

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[5] See "Revenue Implications of Trade Liberalization," IMF Occasional Paper No. 180 by Liam Ebrill, Janet Stotsky, and Reint Gropp (1999).

[6] These points are further elaborated in IMF, "*West Bank and Gaza: Economic Developments in the Five Years Since Oslo*," by P. Alonso-Gamo, M. Alier, T. Baunsgaard, and U. Erickson von Allmen (forthcoming).

[7] See Vito Tanzi, 1987, "Quantitative Characteristic of the Tax Systems of Developing Countries," in *The Theory of Taxation for Developing Countries*, ed. by David M.G. Newbery and Nicholas Herbert Stern (New York: Oxford University Press).

[8] Agriculture and fishing, along with wholesale and retail trade and services account for about 47 percent of GDP at factor cost (IMF, 1999).

[9] This note abstracts from the history of tax administration and tax policy prior to the 1994 Protocol.

practice, comprehensive tax and tariff policy reforms require some or all of the following elements:[10]

- A broad-based consumption tax, such as VAT, with a single rate in the 15–20 percent range, minimal exemptions and a threshold that excludes smaller businesses from taxation.
- A short list of excisable products, limited to petroleum products, tobacco, alcohol, and some luxury goods.
- Equal treatment of imports and competing domestically-produced goods vis-à-vis VATs and excise taxes so that no element of protection exists apart from the existence of import duties.
- Low average import tariff rate, with limited dispersion in the rate structure and avoidance of any export duties.
- A few brackets for personal income taxes, with a moderate top rate no higher than corporate income tax rate, limited personal exemptions, deductions and extensive final withholding; one moderate rate for corporate income tax with little tax incentives and uniform depreciation schedules across sectors.
- Decline in the importance of non-tax revenues, so long as these revenues reflect profits from central bank operations and surpluses from public enterprises;[11] and
- Simplification and modernization of tax and customs administration.

IV. Current Tax Policy Regime

Under the de facto CU since 1994, there is almost no scope for any deviation on rates and coverage of indirect taxes between the WBG and Israel. However, the rate and coverage of direct taxes can deviate. The new income tax law of WBG reduced the tax rates and the number of personal income tax brackets to four (5, 10, 15, and 20 percent).[12] By contrast, in 1998 Israel maintained a five periodic inflation-adjustable brackets of 10, 20, 30, 45, and

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[10] See George Abed and others, 1998, "Fiscal Reforms in Low-Income Countries. Experiences Under IMF-Supported Programs," IMF Occasional Paper No. 160; and Liam Ebrill, Janet Stotsky, and Reint Gropp, 1999, "Revenue Implications of Trade Liberalization," IMF Occasional Paper No. 180.

[11] At present, profits from public enterprises in WBG are not included in non-tax revenues due to lack of information on the operation of these enterprises.

[12] The new income tax law is based on the Jordanian tax laws which is in need of reform itself.

50 percent on active personal income. In 1998, revenues from direct taxes in WBG amounted to 10 percent of tax revenues as compared with about 50 percent in Israel.

The Paris Protocol established a revenue clearance system which allocates revenues from an agreed pool of taxes between the PA and Israel. The system has been working rather smoothly since it was established in 1994. Revenues from direct taxes are allocated according to the following formula. Of the total revenue raised from income taxes on Palestinians working in Israel, 75 percent is transferred by Israel to the PA.[13] The lower than 100 percent allocation is based on the argument that Palestinian workers need to pay for social services they consume in Israel and the use of infrastructure. Revenues from indirect taxes are allocated according to the destination principle. Indirect tax revenues (i.e., VAT, custom duties and the so-called purchase tax)[14] on goods that are directly imported to WBG are all transferred to the PA. The allocation is based on actual transactions, which require import declaration forms, rather than any macro formula. However, revenues from customs and purchase taxes on indirect imports via Israel and on purchase taxes on Israeli goods exported to WBG are not transferred to the PA. Finally, VAT revenues are allocated between the PA and Israeli taxing authorities using the VAT invoice system. The invoice-based system has apparently contributed greatly to the buoyancy of VAT revenues and its success in the WBG. The current VAT rate is set at 17 percent in both WBG and Israel with some standard exemptions. Under the Paris Protocol, differential VAT rates (a maximum of 2 percentage points lower than the VAT in Israel) were allowed, but the PA never exercised this option.

The Protocol allowed some autonomy to the PA over tax and trade policy by allowing it to set the rates of customs and other charges on imports of specified quantities referred to in two lists, A1 (30 items), A2 (23 items) and with no restrictions on quantities in list B (various specified tools and equipment). The quantities from lists A1 and A2 are determined according to Palestinian "market needs," and for any quantities exceeding the agreed quota the duties are set at the Israeli tariffs. Regarding standards and licensing, Israeli import policy applies to all PA imports, except for the quantities agreed to in lists A1 and A2.

V. Tax Policy Under a De Facto Customs Union

Tax policy under a CU is relatively straightforward as it has been practiced in a de facto CU between WBG and Israel since the Paris Protocol. Tax policy under a de facto CU calls for (i) harmonization of indirect tax rates so that imported goods from one economy do not get exported back to same economy which has a lower rate; (ii) granting a limited autonomy in

[13] In contrast, 100 percent of health fees are transferred to the PA. Revenues from this source comprise about 4 percent of tax revenues.

[14] A purchase tax is imposed on the wholesale price of selected final consumer goods (imported or locally produced) such as motor vehicles, limited raw materials and intermediate goods. It ranges from 5 to 95 percent. In Israel, revenue yield from this tax typically exceeds that from excise taxes.

setting external tariff policy, thus coming close to a quasi-FTA; (iii) disengagement in harmful (direct) tax competition whereby one tax jurisdiction offers incentives to attract owners of factor of production from another, thus leading to the erosion of the tax base.[15] As the first best solution, evaluation of any proposed future tax policy under (i) through (iii) should be based on the first principles of good tax system that have been discussed previously, an approach that is adopted in this note, to the extent that is possible.

As Israel has low import tariff rates, is a participant in several FTAs (EU, EFTA, United States) and has trade agreements with other countries (Canada, the Czech Republic, Hungary, Poland, the Slovak Republic and Turkey), it makes sense for the PA's future tax policy to continue with these low rates and not to engage in protectionist policies. However, continuation of the existing policy does not imply that a CU will necessarily tie the hands of the PA. In a quasi-CU or quasi-FTA for the future, the PA does not have to perfectly harmonize its rates on all types of indirect taxes that prevail in Israel such as the relatively high purchase taxes and the high TAMA mark-ups; cross-subsidy is possible as explained below. In addition, these taxes and associated mark ups, that have been developed over an extended period of time and serve perhaps particular lobby groups, may fulfill a useful public policy role in Israel, but it is not clear if they do so in the WBG. In such cases, negotiations and coordination of tax policies will pay off when, for example, harmonization of a higher tax rate on one good can be agreed upon in return for harmonization at a lower rate on another. However, in cases where smuggling of certain goods (e.g., used cars) is a real possibility **and** involves a large revenue loss, harmonization may be the only option. The existing large cost differentials between and among various part of the WBG and Israel means that tax rates do not need to be harmonized so long as these differentials do not exceed cost differentials and tax administration costs of maintaining different rates on the same goods do not vary across regions. Otherwise, there will still be incentives for smuggling and tax evasion.

Differential VAT rates (a maximum of 2 percentage points lower than the VAT in Israel) were allowed under the Paris Protocol although never implemented; the differential can still persist or become larger under a future tax policy in a CU. But again it makes sense to have a single VAT rate with the same exemptions in the CU on the grounds of simplicity, tax coordination, and ease of revenue clearance and adoption of a possible macro-based revenue sharing formula. However, the EPS model proposes different VAT rates.

As regards granting the PA a limited autonomy in setting external tariff policy via the three lists of exempted goods, clearly the past experience with these lists suggests room for reform. Areas for reform include: enlarging, and implementing the list; updating it, and negotiating the magnitude of exemptions.

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[15] A CU does not require harmonization of direct tax rates. In a common market, which is the future model proposed under the EPS model, tax harmonization will occur due to mobility of factors of production.

Finally, harmful direct tax competition can in theory occur, but may not matter in practice, given the presence of other barriers such as large regional cost differentials, language, religion, lack of mobility and presence of non-Palestinian immigrant workers in Israel. Tax competition will become a problem, however, in the longer term when the two economies are more similar.

VI. Tax Policy in a Pure Free Trade Area Arrangement

Under a pure FTA, the PA will have an independent tax policy which requires establishing customs borders, adopting rules of origin; VAT will no longer be collected at origin; exports to each country will be zero-rated and VAT rates can differ, with the differentials being even larger than the 2 percentage points allowed under the Protocol. There will be no tax leakage under a pure FTA, given a well-enforced rule of origin, whereas in a CU the PA could not recover revenues from customs and purchase taxes on indirect imports via Israel and on purchase taxes on Israeli goods exported to WBG. In addition, no macro-based revenue sharing formula is needed as the necessary documentation exist which can be used to apportion revenues. Establishment of a pure FTA also requires the PA to take over all the tax and customs administration which will increase the costs of adopting an FTA. Under a pure FTA domestic lobbying would be much stronger than under a CU, and can push for highly projectionist policies, as has been the case in many countries. This will undoubtedly elicit rent-seeking behavior, will contribute to poor governance which will ultimately undermine economic development.

VII. Macro-based Revenue Sharing Formula

The existing inequities (the tax leakage) in revenue clearance system, as manifested in non-transfer of revenues from customs and purchase taxes on indirect imports via Israel and from purchase tax on Israeli goods exported to WBG, have been in effect over the past five years. **Article B4.3 of the EPS model is consistent with this view**.[16] The tax leakage is in fact a reflection of an incomplete design of the fiscal arrangement of the 1994 Protocol whereby the choice of taxes to harmonize and the rates were agreed upon, but not the equally important question of the tax base.[17]

Given the past experience with revenue clearance arrangement, there seems to be a need to compensate the PA for opening its markets to Israel who is in charge of designing tax policy and collecting most taxes under the current regime. Similar concerns have been raised in

[16] According to this article, "The Sides shall agree upon detailed mechanisms for the clearances mentioned in this Article."

[17] The tax base is explicitly taken into account in the SACU revenue sharing formula as shown later in the text; see also Annex II.

Southern Africa Customs Union (SACU) and have been factored into the formula.[18] SACU has been using a macro-based revenue sharing formula for at least the past 30 years. The formula has gone through many revisions. Annex II describes the formula in detail as currently practiced in the SACU. SACU has features which are similar to the present Israeli-PA de facto CU. These are: (i) the presence of a dominant player who collects and manages most of the taxes; (ii) different levels of economic development among the member countries; (iii) a significant number of workers from one country (e.g., Lesotho) working in another (e.g., South Africa);[19] and (iv) high dependence on trade with South Africa. The formula also compensates the smaller poorer economies for opening up their markets to a richer country (South Africa); Annex II provides the details of the compensation factor.

A macro-based revenue-sharing formula along the lines of SACU's can be tailored to the specific needs of Israel and the PA. In particular,

- The formula should be seen as a supplement to the existing revenue clearing system and not a replacement. Abandonment of the existing revenue clearing system, based on invoices and documentation, will be damaging to the current and future economic status of the PA.

- The formula needs to recover as close as possible the revenue forgone by the PA through the tax leakage while perhaps allowing for a compensation to Israel to cover the cost of trade deflection that will result from an expanded lists of exempted goods, if and when, the latter become operational. The revenue base for the formula should include sources of the tax leakage (i.e., revenues from the purchase tax and customs tariffs on indirect imports via Israel and purchase tax on Israeli goods exported to the WBG).

- A compensation factor needs to be calculated for the WBG and Israel.

Formula-based transfers are not without problems, but are routinely practiced in one form or another in countries with a federal or decentralized structure (i.e., the so-called equalization transfers between a rich and poor province within a country) and in other CU such as the SACU as indicated already. The implementation of such transfers should be much easier than in the past, given the range of technical assistance provided to the PA in support of institution building, the working of the existing revenue clearing system, and above all improvement in collection of statistics and trade flows needed for a macro-based formula. Formula-based transfers are also preferable to awarding import licenses to a selected few as they avoid rent seeking and inequities.

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[18] SACU has been in existence since 1910. Members of the SACU are South Africa, Namibia, Lesotho, Botswana and Swaziland. Namibia was not a member until early 1990s.

[19] In 1998/99, remittances of Lesotho contract workers amounted to 18 percent of GNP.

VIII. DISCUSSION

It is difficult to compare revenue implications of the existing de facto CU with that of a pure FTA as it depends on the relative strength of the implied trade creation and trade diversion and the exact departures from textbook definitions of a pure CU and a pure FTA. However, it is perhaps safe to say that there will be an initial revenue shortfall under a de facto FTA as the PA will be in charge of collecting taxes and monitoring tax administration.[20] Of course, this will become less of a problem as the tax administration in the WBG improves over time To counteract this, there would be a revenue increase due to the operation of a macro-based revenue sharing formula which calls for Israel to increase fiscal transfers to the PA. Therefore, the net revenue effect is uncertain.

The EPS model proposes an FTA as the future economic arrangement. **The tax administration proposed under the EPS model complicates the existing tax administration in several ways.**

- Different and large disparities in VAT rates for the WBG and Israel, as proposed in the EPS model (between 12 percent and 22 percent), would undermine the existing revenue clearing arrangements. Different VAT rates increase the compliance cost of comparing VAT invoices, VAT refunds, and decrease the efficiency of a complementary macro-based revenue sharing formula. In fact, the success of the revenue clearing arrangements over the past five years is in part due to the simplicity of having identical VAT rates and perhaps for this reason the PA decided not to lower its VAT rate despite the fact that it was allowed to do so (by a maximum of 2 percentage points) under the 1994 Protocol.

- Not only VAT rates, but also the **VAT base** is an important issue for the future economic arrangement between the two entities. The EPS model is silent on this point. Significant tax administration costs will arise if the VAT base is not the same between the two entities and/or the list of VAT-exempt goods differ among the two.

- Agreeing on and implementing rules of origin will prove difficult in an FTA, given the PA's limited capacity to increase value added components of imported goods. This factor hampers customs administration and increases transaction costs whereas no rules of origin is needed in a de facto CU. In fact, the lax enforcement of rules of origin, despite its importance in the 1994 Protocol, is an important cause of the tax leakage in the first place.

- The proposed tax administration in the EPS model creates incentives for smuggling and tax evasion Large differential VAT rates compound this problem even further.

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[20] Custom revenues can fall permanently if exemptions are broadened permanently which is a real possibility under an FTA.

- Lack of a unified customs administration authority, which is the case under the EPS model, increases the costs of collecting taxes and can have adverse revenue consequences. The establishment of the customs administration in the West Bank as proposed in the EPS model is difficult as it is a patchwork of three areas: full Israeli control, shared control and full Palestinian control.[21] To overcome problems arising from having these three layers of customs administration (e.g., disputes arising from valuation or classification of goods), the EPS model proposes complicated procedures for their resolution. These matters are discussed in Article B5 of the EPS model. The considerable amount of space given to dispute resolutions in Article B5 of the EPS model is a reflection of the unease, complexity, and high costs of not having a unified tax administration authority.

Adopting an FTA at present represents the largest departure from the past five years, and will require a lengthy transition period. The transition period is needed for establishing mechanisms for establishing rules of origin, new tax laws, and a supporting tax administration. The EPS model is silent on the exact modalities of such a transition, and leaves this issue to future work program of both sides.[22]

The foregoing arguments have established why a future tax policy and tax administration regime that is least disruptive to the functioning of the economy of the WBG is indeed a tax policy and tax administration regime under a modified de facto customs union rather than an FTA.[23] However, this thinking should be guided by the first principles of tax system and appropriately modified to take into account the experiences of the past five years with the de facto CU and the Israeli tax structure. This entails:

- negotiations over enlarging the list of exempted goods (A1, A2 and B), increasing the quantities of the goods on the list while making sure these lists are operational, in contrast to experiences of the past five years;

- moving away from heavy reliance on distortionary indirect taxes and towards direct taxes. This can be best carried out by promoting private sector investment that generates tax revenues rather than a large, inefficient public sector bureaucracy which absorbs a large share of tax revenues;

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[21] The establishment of a customs administration is not particularly difficult in Gaza Strip as it is already operational. Taxes are collected at entry points, through the so-called I-invoices for the VAT clearing system. The Gaza Strip port facility, as foreseen in the modified Wye River agreement, would also require a separate customs organization.

[22] The limited discussion of the transition period is contained in Chapter N of the EPS model.

[23] This conclusion is also based on the fiscal costs of an FTA relative to CU as contained in the trade policy note.

- revisiting the 75 percent rule for allocation of income taxes to the PA, based in part on the existence of a large range of social services that have been provided in the WBG by various agencies of the UN and NGOs;

- fiscal transfers from Israel to WBG based on some agreed macro-based revenue sharing formulae which does not undermine the existing revenue clearing system, and

- revisiting and broadening the agreed pool of taxes, an element of the Protocol, which will be an input to the macro-based revenue sharing formula.

The above tax policy needs to be supported by a tax administration which strengthens it even further. The consolidation of the past gains in tax administration and effective use of technical assistance would go a long way towards achieving this aim.

ANNEX I. COMMENTS ON THE EPS MODEL

This annex provides some specific comments on the EPS model while Section VIII in the text includes the general comments.[24]

Transit and Clearance (Article B1)

- Section 1 mentions bonded warehouses as a transit point, but does not discuss any revenue leakage from these warehouses and/or how long goods are allowed to stay in transit. Artificial shortages can be created by the judicious use of length of time for storing goods in bonded warehouses.

Indirect taxation (Article B2)

- Section 2.a suggests that the list of 15–20 products include the purchase tax on durable goods. This proposal is not sound. It enlarges the range of goods subject to excise taxes to an unspecified, long list. Purchase tax is essentially an excise tax and at present varies from 5 percent to 95 percent (exclusive of the mark up TAMA which can raise the tax to over 120 percent). Apart from its unusually high rate, which may be suitable for supporting the Israeli economy's welfare aspirations and other considerations (e.g., lobbying) and may not desirable for a low income country such as West Bank and Gaza, this proposal violates the best principle of taxation system as it has broadened the range of excisable goods beyond their traditional list such as petroleum products, cigarettes and alcohol. These goods are considered excisable because of their negative externalities that they impose on the society. Some countries impose excises on motor vehicles that are considered luxury.

- Section 2.b is ambiguous as it entails two conflicting messages: that each side can and cannot change the purchase tax.

[24] The trade policy note includes additional comments on fiscal aspects of the EPS model.

ANNEX II. MACRO-BASED REVENUE SHARING FORMULA IN SACU[25]

The original formula negotiated in 1969 was as follows:

$$S = (A+B+C)/(D+E+F+G)*R*1.42$$

where

S = the amount allotted to each member country (excluding South Africa)
A = c.i.f. value (at border) of imports into the country irrespective or their origin; imports from common customs are thus included;
B = value of excisable and sales duty goods produced and consumed in the country.
C = excise and sales duty paid on B.
D = c.i.f. value of imports into the SACU;
E = Customs and sales duties paid on D;
F = value of excisable and sales duty goods produced and consumed in the SACU;
G = excise and sales duties paid on F.
R = total revenue pool of SACU which equals E+G;

The scale factor (1.42), which increases the share of the common pool to each SACU member (excluding South Africa) by 42 percent, or the so-called enhancement factor, takes into account the following factors: (i) the price raising effects on imports into the Union of a tariff system designed to protect South Africa producers; (ii) the industrial polarization effect resulting from the tendency of industries serving the Union to locate in South Africa; and (iii) the loss of fiscal discretion by member countries due to the fact that South Africa retained the right to determine tariff and excise rates for the entire SACU.

For the normalization purposes, the amount S accruing to each CU member (excluding South Africa) as calculated above can be compared with (A+B+C). Hence, S/(A+B+C) defines the rate of revenue from the pool for each member country.

The 1978 amendment clearly extended A to include all duties paid or payable on imports to each member (excluding South Africa). The 1969 agreement was not clear on this point although this factor was taken into account from 1969/70.

The agreement, as amended in 1978, provides for a stabilization factor which stabilizes revenues accrued to each member (excluding South Africa). The 1978 stabilization clause normalized the enhanced shares at 20 percent of (A+B+C) and provided for a lower and upper bound. The standard level for stabilization is set at 20 percent of (A+B+C). If the amount accruing to each member (excluding South Africa) is less (more) than 20 percent of (A+B+C), an amount equal to 50 percent of the difference between the calculated amount

[25] See World Trade Organization, 1998, *Trade Policy Review, SACU Volume 1, South Africa*.

S and 20 percent of (A+B+C) is added (subtracted), provided that the resultant amount, which will be called S_s below satisfies the following:

$$S_s = S \pm 0.5 \left| S - 0.2*(A+B+C) \right| ; \text{ and } 0.17 \leq S_s/(A+B+C)) \leq 0.23$$

After calculation and taking into account constraints on the variables, the above formula becomes

$$S_s = 0.5*S + 0.1*(A+B+C)$$

with a floor of 17 percent of (A+B+C) and a ceiling of 23 percent of (A+B+C).

Labor Outcomes in Final Status

A Theoretic Approach to Quantifying Employment and Wage Outcomes

Elizabeth Ruppert[1]
The World Bank

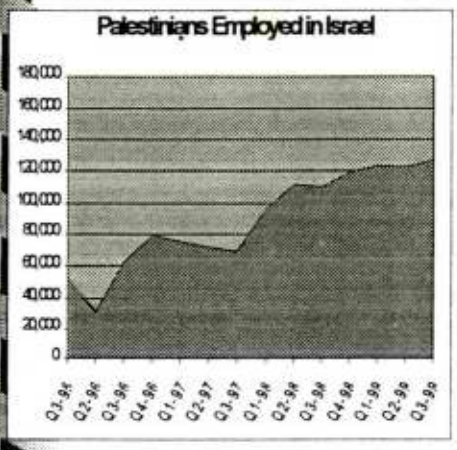
February 2000

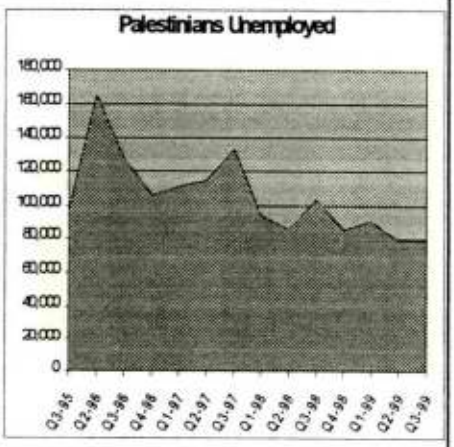
[1] The views expressed are the author's and do not necessarily represent those of the World Bank.

Overview of Labor Market Trends

- Israel important source of Palestinian employment
  - ⇨ averaged one-third during the 1980s
- Post-Oslo decline, with tightened security, permit requirements and closure policy
  - ⇨ 1996 labor flows to Israel = half their 1992 peak level of 120,000
- Palestinian unemployment deteriorated
  - ⇨ averaged 24% in 1996 – and 32% in Gaza

Close link between access to Israel's labor market and Palestinian unemployment





Source: PCBS Labor Force Surveys

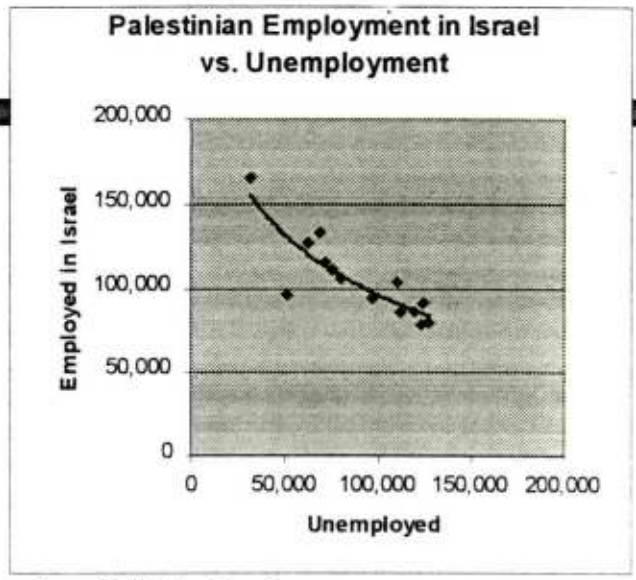
Overview (cont.)

- Israeli employers responded by replacing Palestinians with foreign workers
- Foreign labor force swelled to > 150,000, reflecting:
  - substitution away from Palestinians
  - rapid increase in unskilled labor demand
- Israel remains important, providing >one-fifth of total Palestinian employment/130,000 jobs

Stylized Facts

Palestinian Labor Market

- Segmented between domestic employment and Israeli employment
- Wage gap between domestic and Israeli wages
- Rigidities due to constrained labor mobility (e.g., permit controls, closures)
- High unemployment rate
- Workers seek higher-paying jobs in Israel
- High (negative) correlation between Palestinian employment in Israel and unemployment



Source: PCBS Labor Force Surveys

Stylized Facts

Israeli Unskilled Labor Market

- Segmented between Palestinians and foreigners
- Wage gap

1 Formal sector: payroll taxes for Palestinians 16-29%, compared to 0.67% for foreign workers

2 Low foreign reservation wage (reflecting sending-country conditions)

3 Non-binding permit controls on foreign workers

Evidence: Estimated 80,000 legal foreign workers out of total 150,000

= > Assume an infinite supply of foreign workers

Israeli Unskilled Labor Market

➢Wage gap

4 Binding supply controls on Palestinians

Evidence: Large fluctuations in Palestinian employment in Israel concurrent with stricter permit requirements/border closures

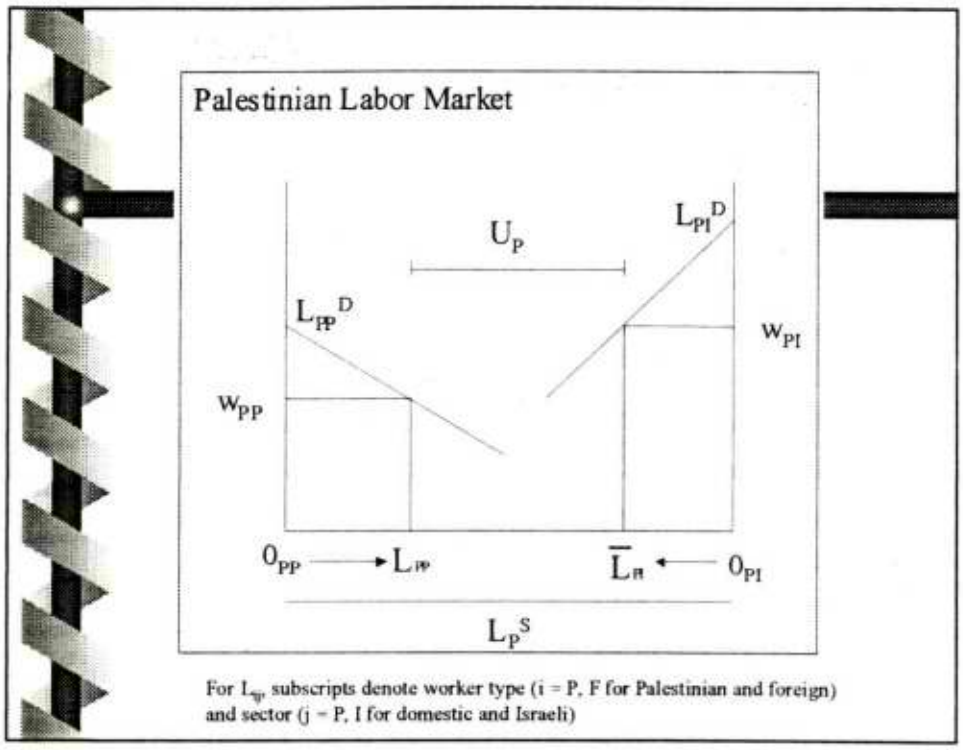
5 Constrained Palestinian labor supply → high wages

6 Uncertainty re: closures raises Palestinian labor cost more

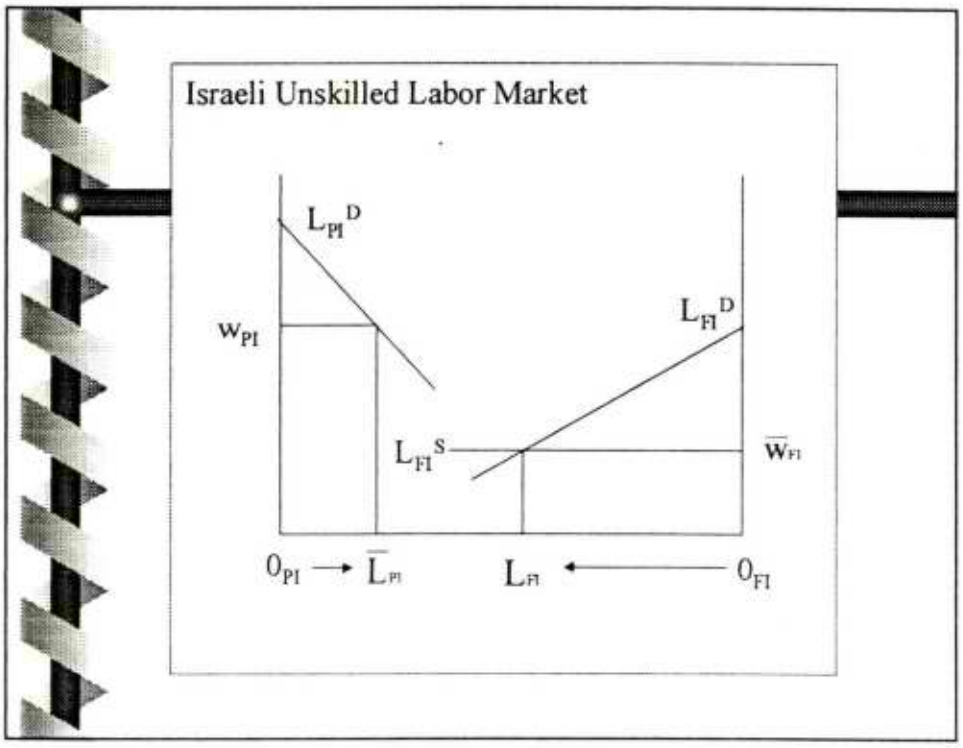
7 Although Israeli employers have replaced Palestinians with foreign workers, there remains Israeli demand for Palestinians

Evidence: Palestinians not completely replaced by foreigners, despite considerably higher labor cost and abundant foreign workers

= > Palestinian and foreign workers are **imperfect** substitutes



For L_{ij}, subscripts denote worker type (i = P, F for Palestinian and foreign) and sector (j = P, I for domestic and Israeli)



The Model

Palestinian Economy

Competitive market, produces 1 good f(L_{PP}) using labor input L_{PP}

(1) $L_P^S = L_P^D + U_P$

(2) $L_P^D = L_{PP} + L_{PI}$

Normalizing the total labor force ($L_P^S = 1$), solve for u_P:

(1)' $1-u_P = L_{PP} + L_{PI}$

Palestinian Economy

Competitive firms maximize profits by setting marginal output to marginal cost:

$$\text{Max } f(L_{PP}) - w_{PP}L_{PP} - C_P$$

where C_P are fixed costs for non-labor inputs
(price of output f normalized to 1, w_{PP} are real wages) =>

(3) $f'(L_{PP}) = w_{PP}$

(4) $\delta = -\frac{dL_{PP}}{dw_{PP}}\frac{w_{PP}}{L_{PP}} > 0$

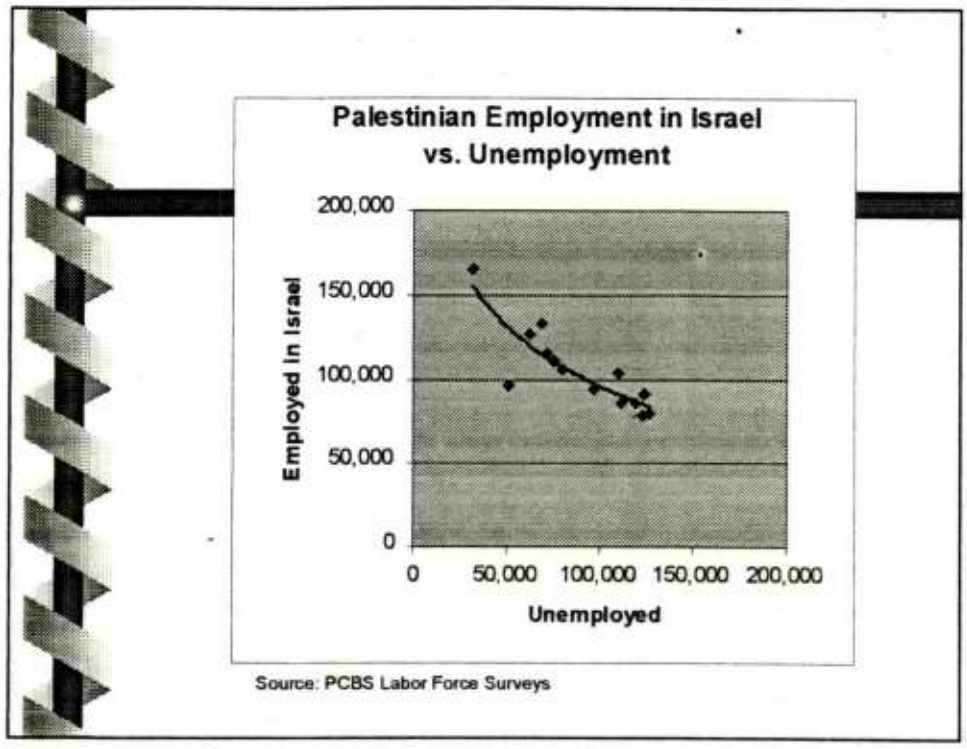
Wages

- To reflect wage gap, assume L_{PI} set by Israeli permit policy below actual Israeli labor demand
- Constrained labor supply determines high Palestinian wage w_{PI} => unemployment.
- At the margin, a worker chooses between:
  - ⇨ Palestinian job at w_{PP} available with certainty, or
  - ⇨ Israeli job at w_{PI} available with probability < 1 (depending on the unemployment rate)

From Harris and Todaro (1970), workers migrate until expected earnings are equalized in equilibrium:

$$(5) \quad w_{PP} = (1 - u_P) w_{PI}$$

- ⇨ Linear relationship is a stylized assumption, but is supported by the evidence of a negative correlation between L_{PI} , u_P



Source: PCBS Labor Force Surveys

Equilibrium wage condition

- Intuition: workers search for high-paying Israeli jobs but unemployed while searching.
- In model, $1-u_P$ (the wage gap) captures Palestinian job search costs, the resource investment in obtaining permits (time, $), and transportation costs.

Next Step

- Decompose w_{PI} into its wage component w_{PI}^{Actual} and risk premium ϕ ($\phi \geq 1$)

Equation 5 becomes:

$$w_{PF} = (1 - u_F) w_{PI}^{A} \phi$$

Israeli Unskilled Economy

Competitive market, produces 1 good $g(L_{PI}, L_{FI})$ using 2 types of unskilled labor input, L_{PI} and L_{FI}

(6) $L_{UI} = \bar{L}_{FI} + L_{FI}$

L_{FI} assumed to be residual:

(6)' $L_{FI} = L_{UI} - \bar{L}_{FI}$

Israeli Unskilled Economy

Competitive firms maximize profits by setting marginal output to marginal cost:

$$\text{Max } g(L_{FI}, L_{PI}) - w_{PI} \cdot \phi(L_{PI}) L_{PI} - \gamma\, w_{FI} L_{FI} - C_I$$

where $\partial\phi/\partial L_{PI} < 0$, γ = non-wage costs, C_I = fixed costs, prices normalized s.t. w_{PI} and w_{FI} are *real* wages =>

(7) $$\frac{\partial g(\cdot)}{\partial L_{PI}} = g_P = w_{PI} \cdot \phi(1+\varepsilon_\phi)$$

(8) $$\frac{\partial g(\cdot)}{\partial L_{FI}} = g_F = \gamma\, \overline{w}_{FI}$$

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f (·), g(·) continuously differentiable:

$f_P>0$, $f_{PP}<0$ $g_P>0$, $g_F>0$, $g_{PP}<0$, $g_{PF} = g_{FP}>0$, $g_{FF}<0$

Note: Wages w_{ij} represent employers' labor costs

Solving the model

Need definitions for:

- elasticity of technical substitution between Palestinian and foreign labor, σ
- constant-output own-price and cross-price elasticities for L_{PI} and L_{FI}

Model Predictions

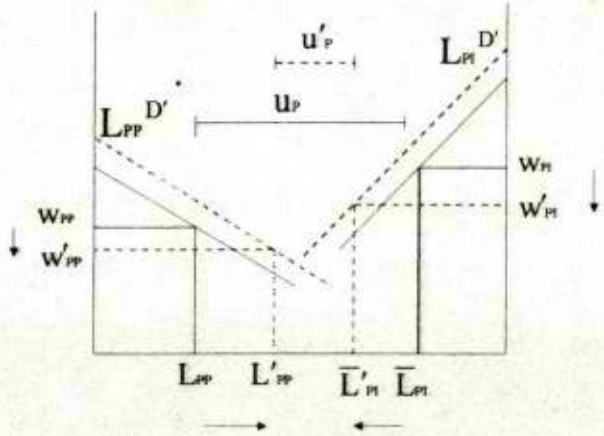
- Equations 1-8 can be solved for comparative statics results, e.g., dw_{PI}/dL_{PI}, du_P/dw_{PI}
- Can estimate the long-term (constant-output) effects on employment, unemployment, and wages as a result of policy shocks:

  Case 1: Δ Palestinian mobility to Israeli jobs (increase/decrease in L_{PI})

  Case 2: Tax on foreign labor ($\gamma\uparrow$)

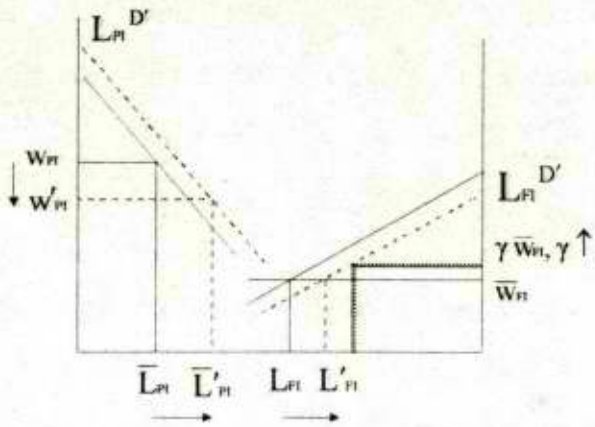
  Case 3: Δ Palestinian payroll tax rates (domestic or in Israel)

Palestinian Labor Market Case 1: $\bar{L}_{PI} > 0$



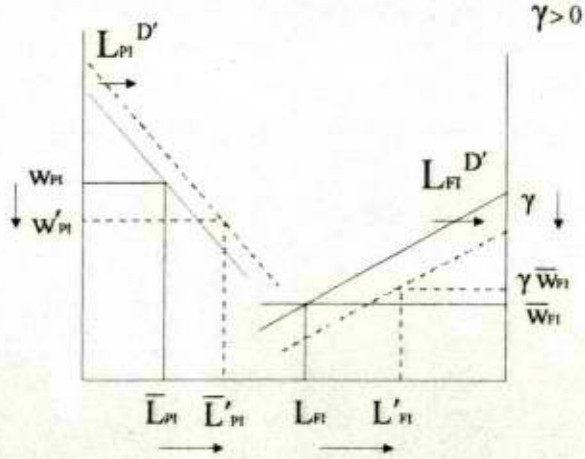
Note: Graphs depict scale effect (output not constant)

Israeli Unskilled Labor Market Case 1: $\bar{L}_{PI} > 0$



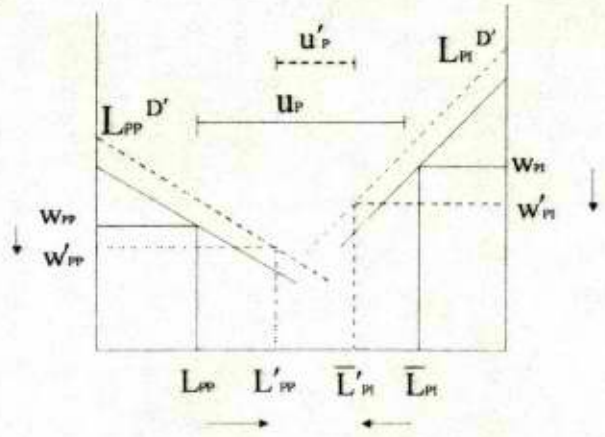
Israeli Unskilled Labor Market

Case 2 : Foreign labor tax



Palestinian Labor Market

Case 3 : Lower payroll tax on w_{PI}



Calibrating the Results

- Need to assume functional forms for production functions *f* and *g*:

$$f(L_P) = \mu L_P^{\frac{\delta-1}{\delta}}$$

$$g(L_P, L_I) = \left(\alpha L_P^{\rho} + (1-\alpha) L_I^{\rho}\right)^{\frac{1}{\rho}}$$

$f(L_{PP})$ non-linear

$g(L_{PI}, L_{FI})$ CES production function, where $\rho = (\sigma-1)/\sigma$ and $0 < \alpha < 1$.

Calibrating the Results

- Need parameter values
  - L_{PP}, L_{PI}, u_P, and w_{PI}: PCBS aggregate survey data
  - w_{FI}, L_{FI}, γ, s, and α: Israeli estimates
  - δ unobservable: (i) international experience or
    (ii) estimate using survey data
  - σ and ρ unobservable - need to make educated guess
  - Eventually, will use micro-level survey data to estimate the wage gap (w_{PP}/w_{PI})

Preliminary Comparative Statics Results

Scenario	1	2	3	4	5
Parameter Values:					
Labor Supply L_s^S	1	1	1	1	1
u_p (incl. Underempl.)	0.182	0.182	0.182	0.182	0.182
δ	0.5	0.3	0.75	0.5	0.5
σ	1.1	1.1	1.1	2.0	1.1
s	0.55	0.55	0.55	0.55	0.40
w_{pp}	98.2	98.2	98.2	98.2	98.2
w_{pt}	100	100	100	100	100
w_{tt}	80	80	80	80	80
L_{pp}	0.632	0.632	0.632	0.632	0.632
L_{pt}	0.186	0.186	0.186	0.186	0.186
$L_{pt}/(L_{pt}/L^S)$	0.22	0.22	0.22	0.22	0.37
L_{st}	0.41	0.41	0.41	0.41	0.56
α (input share of L_{pt})	0.45	0.45	0.45	0.45	0.33
ρ	0.091	0.091	0.091	0.050	0.091
γ	1	1	1	1	1
ϕ	1.20	1.20	1.20	1.20	1.20
ε_ϕ	-0.996	-0.996	-0.996	-0.996	-0.996

Calibrated Results for dL_{pt} = 15,000

Scenario	1	2	3	4	5
%-change in variable:					
w_{tt}^A	-12.6%	-12.6%	-12.6%	-1.5%	-7.1%
L_{pp}	9.7%	6.5%	12.7%	4.9%	7.3%
w_{pp}	-19.3%	-21.7%	-17.0%	-9.7%	-14.6%
u_p	-45.9%	-35.0%	-56.5%	-29.2%	-37.7%
L_{pt}	12.1%	12.1%	12.1%	12.1%	12.1%
L_{st}	-0.2%	-0.2%	-0.2%	0.0%	-0.1%
γ	0.03%	0.03%	0.03%	0.02%	0.02%
L_{st}	5.4%	5.4%	5.4%	5.4%	4.0%
ϕ	-14.4%	-14.4%	-14.4%	-14.4%	-14.4%
Nominal change in variable:					
dw_{tt}	-12.6	-12.6	-12.6	-1.5	-7.1
dL_{pp}	40,766	27,528	53,672	20,541	30,802
dw_{pp}	-19	-21	-17	-10	-14
du_p	-65,766	-42,528	-68,672	-35,541	-45,802
dL_{pt}	15,000	15,000	15,000	15,000	15,000
dL_{st}	-239	-239	-239	-52	-195
$d\gamma$	0.0003	0.0003	0.0003	0.0002	0.0002
dL_{st}	14,761	14,761	14,761	14,948	14,805
$d\phi$	-0.17	-0.17	-0.17	-0.17	-0.17

Some surprising results

1 Increase in Palestinian jobs in Israel (by 15,000) leads to even more job growth in Palestine (40,800) through a lower effective reservation wage, and a large decline in unemployment (from 18% to 10%)

2 the impact on foreign labor L_{FI} is small, suggesting some rigidity in the model which could be revised

Testing Final Status End-point Assumptions

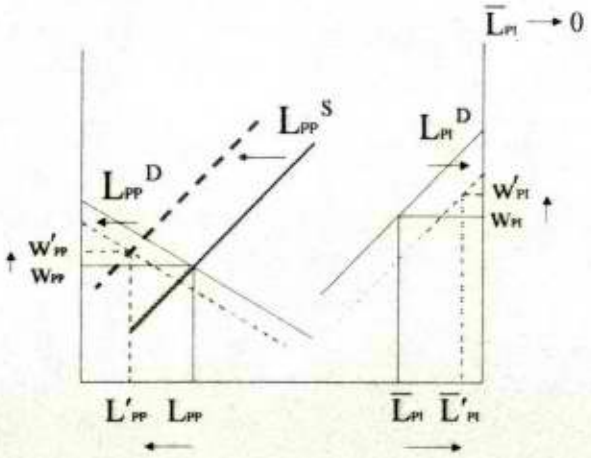
- Case 4: Closed borders ($L_{PI} \rightarrow 0$)

Predictions are counter intuitive – expect domestic wages w_{PP} to adjust downward to absorb the influx of Palestinian workers.

Instead, higher w_{PI} induces more Palestinians to seek Israeli jobs, exacerbating unemployment.

Palestinian Labor Market

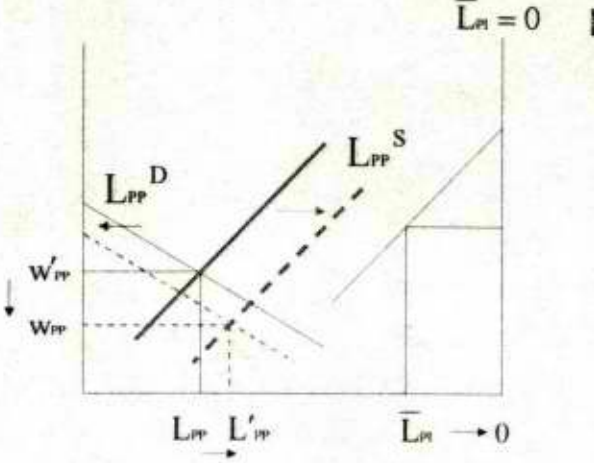
Case 4: Closed Borders



More extreme: let $L_{PI} = 0$

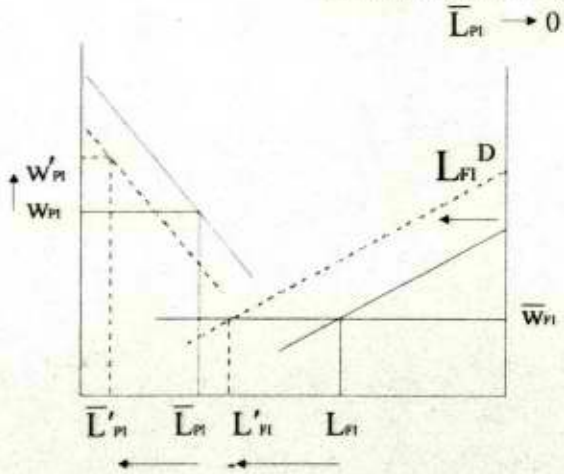
Palestinian Labor Market

Case 4: Closed Borders



Israeli Unskilled Labor Market

Case 4: Closed Borders



Adjustment costs

- Increase in Israel's foreign labor demand → long-term wage bill savings for employers
- But adjustment costs during a transitional period could be significant:
  - Lost output while recruiting L_{FI}
  - Congestion effects, driving $\gamma \uparrow$
  - End-of-service social benefits required of employers (formal sector only)

Testing Final Status
End-point Assumptions

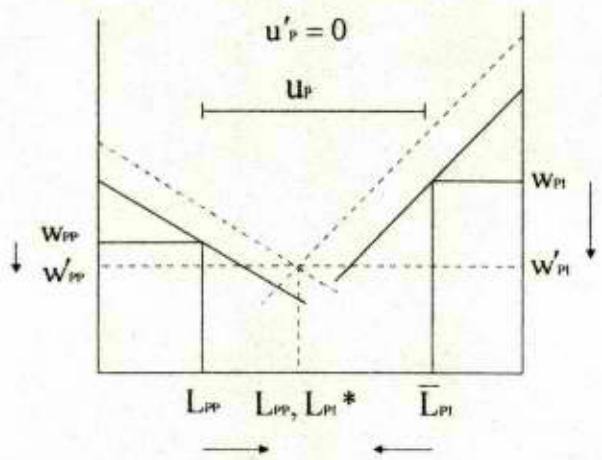
- Case 5: Open borders (perfect labor mobility)

- In theory, free mobility allows wages to adjust fully to clear the Palestinian labor market

- Results in an increase in total demand for unskilled labor (L_{UI} ↑)

Palestinian Labor Market

Case 5: Open Borders, Perfect labor mobility



Completing the Analysis – Future Work

- Sensitivity Analysis

  Q: How sensitive are the results to assumed parameter values?

- Short-term outcomes

  Q: How different are the results when output is allowed to change by including a scale effect?

- Change underlying assumptions about labor demand

  Q: What if permits/border controls are not binding on L_{PI} and foreign labor supply is constrained (L_{PI} is residual demand)?

Completing the Analysis – Future Work

- Extending the model
  - ⇨Decompose L_{PP} into government and private employment
  - ⇨Differential effects on Gaza and West Bank workers, role of settlements
  - ⇨Dynamic processes (e.g., demographic pressures, product markets/consumer demand, Israeli business cycle fluctuations, foreign labor force growth, capital accumulation).

Policy Implications

- Increasing labor mobility to Israel increases domestic job creation and reduces unemployment
- Labor policy/mobility controls driven by security concerns, not economic factors, are distortionary
  - ⇨ Alternatives: closure-proof permits, negative list
- Foreign labor tax, lower tax on Palestinians both have positive employment effects
  - ⇨ Is neutral tax policy sufficient payroll, or pro-Palestinian terms?
- Open borders facilitates labor market flexibility, increasing labor demand through low wages
- Closed borders exacerbates u_p and hurts living standards

Permanent Status Trade Relations
between
the State of Palestine and the State of Israel

Dr. Adel Zagha
February 1999

I. Introduction

On the eve of the negotiations on the permanent status regarding the Palestinian question the importance of a clear vision regarding the relationships between the State of Palestine and the State of Israel becomes more relevant and pressing. The discourse in this regard in both sides as well as among both sides in the academic and policy-making spheres has been ongoing since the Oslo Agreement under the auspices of the donor community. Almost entirely the Israelis are for a customs union between Palestine and Israel. Few of them argue for a free trade area or a hybrid of a customs union and some elements of a free trade area. Neither the time nor the concern of this paper allows us to review these views. On the Palestinian side there is still no consensus either in the academic sphere or in the policy-making one regarding the type of trade relations between the two entities.

In this paper our concern is to develop principles and guidelines for the Palestinian position, and to suggest trade arrangements between the two entities that have to prove flexibility, maximum welfare gains, with minimum deadweight losses, and the ability to be conducive to future economic growth of the Palestinian entity. Our aim is to present the different possible scenarios of permanent status trade relations between Israel and Palestine from a Palestinian perspective. The paper will discuss the advantages of each of the scenarios that can utilize the potentials of peaceful and cooperative atmosphere between the two neighbors. Five scenarios will be presented and discussed thoroughly. These scenarios are:

1. *The Most-Favored Nation Status (MFN) scenario*
2. *The Generalized System of Preferences (GSP)' scenario*
3. *The fully-fledged FTA scenario*
4. *The fully-fledged CU scenario*
5. *The business-as-usual scenario, i.e. a hybrid of a customs union (CU) and some elements of a free trade area (FTA)*

No matter what scenario might be desirable from the Palestinian perspective, however, there are advantages of cross border cooperation between the two sides. The advantages of the activities of this kind of cooperation will be highlighted and the areas for such cooperation will be outlined. These activities will be the backbone of whatever scenario that might be adopted since they will increase the cost of any unilateral attempt to dissociate from the agreed-upon arrangements. A conflict resolution mechanism will be suggested to retain the flexibility and efficient implementation of the optimal scenario.

The paper is organized as follows. The first section stresses the strategic goals of the development of the Palestinian economy. The second section analyzes the five scenarios mentioned above and highlights the advantages and disadvantages of each

of these scenarios. The third section highlights the cross-border cooperation activities doomed necessary to utilize the potentials of peaceful and normal relations between the two independent states. Section four sums up the paper with some policy recommendations.

II. Strategic Goals of the Palestinian Economy

Following the Six-Day War in 1967, control of the West Bank and Gaza Strip (WB and GS) passed on from Jordan and Egypt, respectively, to Israel. Since then, the economies of the WB and GS have become closely integrated with that of Israel. The WB and GS trade intensively with Israel, and their labor markets have come to be intimately linked to that of the latter. At peak times, almost one third of the gainfully employed residents of the WB and GS have been employed in Israel. They have accounted for seven percent of total employment in Israel and contributed one quarter of the GNP of the WB and two fifths of that of the GS.

During the military occupation Israel imposed a ***customs union*** on both the WB and GS together with the following additional elements:

- ***some factor movement***, i.e.
  - *Palestinian workers* were allowed to commute on daily basis forth and back, and the
  - *Israeli capital* was allowed to invest in the Palestinian territories mainly in the form of building settlements for Israeli settlers and the related infrastructure and industries mainly by force and on the expense of the Palestinians), and
- the *Israeli shekel* was allowed to be a ***legal tender*** together with the Jordanian dinar and the US dollar.

So in a sense the economy of the WBGS was ***integrated*** with the Israeli economy ***on the Israeli terms*** after the normal ties of the Palestinian economy with its Arab neighbors were cut off.

The Oslo Agreement and the Paris Protocol on Economic Relations between Israel and the PLO (henceforth the Protocol), signed in Paris on April 29, 1994, circumscribed the interim period 1994-May 1999. The main provisions of the Protocol that deserve some notice are:

1. Broadly speaking, the Protocol formalizes the *de facto* CU between the WBGS and Israel that existed *de facto* when the WBGS were under Israeli control. The existing Israeli tariffs will continue to serve as the common external tariff (CET). There are quantitative restrictions on the movement of five agricultural products exported by the WBGS. The quotas must have been expanded annually until supposedly they were phased out in the end of 1998.
2. The Protocol allows for a partial opening of the WBGS's trade with Jordan and Egypt and with the rest of the world through these two countries. There are three positive lists (A.1, A. 2, and B) which spell out items that can be imported from or through Jordan or Egypt.

3. Finally, the Protocol recognizes that Palestinians will continue to seek employment in Israel. But it does not guarantee them unlimited access to the Israeli labor market. In fact, the Protocol explicitly gives the employing side (Israel) the "right to determine from time to time the extent and conditions of the labor movement into its area".

So far, ***the Protocol has failed to deliver on its promises***. Few main points must be stressed in this regard.

(1) The customs union, trade with Egypt and Jordan, and the labor movement have not worked smoothly. Repeated border closures have interrupted both the flows of goods and workers. These interruptions have harmed both sides, but more so far the WBGS. For one thing, the flow of goods from Israel into the WBGS is interrupted less than that in the reverse direction. Even the WB-Jordan and GS-Egypt borders, which are under Israeli control, have been subject to closure. The trade between the WBGS and these two countries remains to be marginal.

(2) This arrangement can be safely described as ***cumbersome*** and ***costly*** for the Palestinian side. The trade with Jordan represents a good example of how cumbersome and costly the bridge-crossing trade has been. Practically, there is 100% increase in the prices of the Jordanian products imported to the WBGS for logistical problems associated with the transport of ***back-to-back procedure*** of these products which is an Israeli security-related issue. The Damiah (Al-Karameh) Bridge had been built to suit a maximum load of 20-25 tons. The average load of a truck loaded with cement is 35 tons, which means that bridge crossing is possible only with unloading and reloading of the products on both sides of the Jordan River. In addition to that, the Israelis insist on the physical test of everything more than their dependence on the electronic search.

(3) Moreover, and since the opening of the border-crossing station between Israel and Jordan in the north, the ***Israelis are benefiting from the situation on the expense of the Palestinians***. The Israeli dealers import the Jordanian products and re-export them to the WB since the market for such goods in Israel is limited. This has added to the ***fiscal leakage*** of import tax revenue and customs levies. This fiscal leakage is described below in a separate paragraph (see (5) below).

(4) Furthermore, the Protocol and other peace accords ***failed to achieve any independence from the Israeli agencies*** for which the Palestinian representative agents of foreign companies have had hoped. Mitsubishi, for example insists that its Israeli agents, or even Jordanian are the only authorized agents for the WBGS. In practical terms, the Palestinian agents are becoming sub-agents for the Israeli importing agencies.

(5) While the Protocol accepts the principle of revenue sharing of import taxes and customs levies according to the principle of final consumption, it stipulates that import documentation should clearly indicate a Palestinian destination in order for this measure to be valid. The problem is that most Palestinian imports, including those from or through Jordan, are purchased indirectly from Israeli traders for various reasons including avoidance of administrative hassles. The outcome of this arrangement is a ***substantial fiscal leakage***, which is a direct result of the unfair sharing formula between Israel and the PNA on indirect

import taxes. Shaban and Jawhari (December 1995) estimated this fiscal leakage by using data on Palestinian imports in 1992. Accordingly, ***the estimated loss*** ranges between $126 million and $155 million, which ***accounts for 6% to 7% of the Palestinian gross domestic product (GDP)***. Over the period 1994-1996, the projected loss of foregone import taxes on Palestinian indirect imports is estimated at anywhere between $166 million and $275 million per annum. In relative terms the magnitude of this loss appropriated by the Israeli Treasury is greater than the annual aid of the largest international donor (the USA or the EU), and is likely to exceed the combined aid of the two largest donors. In Palestinian domestic terms, this loss is also greater than twice the income taxes collected by the PNA in the WBGS. These estimated do not take into account the additional loss of import taxes on the Jordanian products re-exported to the WB by Israeli traders after the opening of the north border-crossing station between Israel and Jordan. They attributed the unfairness implied by the present arrangement to three aspects. These aspects are:

a) *The strict rules of origin are not applied to Palestinian imports from Israel in clearing revenues between the PNA and Israel. That is, while the majority of Palestinian imports from Israel are of non-Israeli origin, the revenue on such imports does not accrue to the PNA, but rather to the Israeli Treasury.*

b) *Revenue clearance with Israel for imports is based on actual invoices (the micro-approach) whereby a limited percentage of actual invoices is presented to the Palestinian authorities, rather than on total import flows (the macro-approach).*

c) *There is no compensation for the price-raising effect of the Israeli trade regime on Palestinian consumer goods.*

Taking these observations into account, and the specific characteristics of the Palestinian economy, i.e. its *small size*, *poor resource-base*, *extreme external dependence*, *limited internal potential of job creation*, and the *declining prospects for the export of labor services* to the Arab Gulf countries and to Israel as well, ***it is of extreme importance to clearly define the strategic goals of the Palestinian development efforts***. These goals are of extreme importance as well to guide the Palestinians in their selection of any trade arrangement with Israel for the permanent status solution. Unfortunately, the Palestinians did not formally formulate such goals. Nevertheless, we can include the following as necessary strategic development goals and we do not believe that there is a controversy among the Palestinians about these:

* To put an end to the inequitable one-sided dependence of the Palestinian economy on the Israeli economy. Instead, the Palestinians opt for mutual and equal interdependence between two independent states into this form of interdependence in a way that is conducive to the Palestinian interests and from the platform of independent will and not from the platform of coercion by a unilateral decision whatsoever.

* To retain the Arab dimension of the Palestinian economy, not only from the national perspective that is necessary for the development of the Palestinian state, but also from the perspective of mutual interests of the Arab peoples on the basis of economic efficiency, since such dimension will enable the Palestinians to achieve economies of scale and thereby reduce the cost of production and enhance their comparative advantage be it natural or acquired.

* To utilize the optimal trade arrangement that can enable the Palestinians to make their trade relations with the Arab world in particular and the rest of the world in general an engine for the growth of their economy, a necessary though insufficient condition for their economic and social development.

* To reduce the vulnerability of the Palestinian economy to the international and regional fluctuations to the minimum. This necessitates the shift of the orientation of the economy from the export of labor services to Israel and the Arab Gulf states towards the export of merchandise and non-labor services, and to enhance the comparative advantage of the Palestinian products and services in order to occupy a reliable niche in the world export markets.

The attainment of these goals is neither an easy task nor it is a short-run process. The search for new methods, the review of policies, the flexibility to adapt to the changing international and regional environment with the least losses are all necessary elements in the overall development strategy. There is a lot of learning involved here to gain the necessary experience to how enter and penetrate world and regional markets, and to be responsive to the technological change. Moreover, the Palestinians will still have to rebuild their physical, legal and institutional infrastructures and upgrade them to standards that are conducive to the success they desire to achieve.

So what are the trade scenarios that are possible? Which scenario is more conducive to these goals? The next section deals with these and other related issues.

III. Possible Trade Arrangements between the State of Palestine and the State of Israel

The issue of possible trade arrangements for the Palestinians and the Israelis has been tackled by many Palestinian, Israeli and other economists. It is not the place here to mention all these contributions to this discussion. We begin this discussion by the scenario of the Most Favored Nation Status.

(1) The Most Favored Nation Status Scenario (MFN)

When a country confers the MFN status upon another country it does this by agreeing not to charge tariffs on that country's goods that are any higher than those it imposes on the goods of any other country. This is the least that Palestine and Israel can agree upon to arrange the flow of goods between them. Tariff rates that apply in this case are usually called *Column 1 General Rates of Duty*. Countries that are not granted the MFN status would be subject to *Column 2 Rates of* Duty which are substantially higher than MFN rates. The ***advantages*** of this scenario are that:

(a) Each country would be free to set its own tariffs against the rest of the world (ROW). It is a nondiscriminatory arrangement. Israel would treat Palestine on the basis it treats the ROW with which it has no FTA. Palestine would do the same thing regarding its relations with Israel.

(b) It offers each country to gain extra revenues from the tariffs imposed on the goods from the other side.

(c) There will be no need for a revenue sharing mechanism or a conflict resolution mechanism.

(d) For some producers of both sides this arrangement would produce some protection from the rivalry products of the other side.

(e) Moreover, goods that used to be imported through Israel to the WBGS from the EU or the USA would have to be imported directly by the Palestinians in order to enjoy the FTA agreements between the PNA and these regions. This might be desirable by the Palestinians to ascertain the sovereignty of their State although sovereignty can be better achieved through other mechanisms without the costs that are associated with this scenario.

This scenario, however, would mean a retreat from the business-as-usual scenario that already exists between them. The ***disadvantages*** of this scenario include the following:

(a) It entails higher than zero-tariffs on the Israeli as well as the Palestinian goods. The transition from the status quo to this arrangement represents a movement towards a lower, sub-optimal arrangement. The efficiency of both economies with such scenario would be lower than before because the costs of imported raw materials or intermediate goods would be higher for both sides. On both sides, pressure groups will not accept such a transition. Most probably smuggling activities will increase between both sides. The loss of tariff revenue in this case will be higher for the Palestinian side than for the Israelis.

(b) Such an arrangement is associated with higher welfare costs for the consumers of both sides, because of higher prices due to the tariff and other customs levied on the goods that flow from one side to the other.

(c) The deadweight loss of such an arrangement would be very high provided that tariff revenue is low enough to be able to offset the difference between the consumer costs and the producer surplus gain.

Although the final conclusion about this scenario is not based on a rigorous empirical test, we would not imagine that the final result of the MFN status scenario is a positive one. ***When compared to a free trade arrangement between both sides this scenario is sub-optimal. The MFN scenario must be ruled out from the possible scenarios***. However, a rigorous empirical test must be applied to see the validity of this conclusion. *To this end a technical study must be commissioned as soon as possible.*

(2) The Generalized System of Preferences (GSP) Scenario

A system where countries (usually industrialized) charge preferential lower tariff rates on goods from certain countries (usually developing) is called the generalized system of preferences. The tariff rates applied in this case are called *Column 1 Special Rates of Duty*. Special rates of duty could be offered to countries with which a FTA arrangement has been signed. In this case the special rates of duty are zero. Otherwise, the rates are higher than zero but lower than Column 1 General Rates of Duty. This system can be used partially and be applied to certain goods when certain industries are of mutual interests to both sides. The ***advantages*** of this scenario are not different from the MFN scenario. More than the MFN *scenario*, however, *a GSP scenario can make the transition from the status quo to a scenario of MFN for certain industries in both countries smoother and less painful*. Many industries will try to achieve a certain degree of vertical integration and exercise pressures through industrial lobbies to qualify for lower tariffs and benefit from the GSP. This will, of course, increase the dependence of the Palestinian economy on the Israeli economy.

In sum, although the ***GSP scenario*** is an improvement over the MFN status scenario, it ***is still a sub-optimal arrangement*** that is associated with the disadvantages of the MFN scenario qualitatively. In quantity terms, the deadweight loss of such an arrangement is likely to be less than that of the MFN scenario. ***In the case that a MFN scenario was desirable by either side some sort of GSP rates must be applied to reduce the costs of transition from the status quo to a less free trade situation.***

(3) The Fully-fledged FTA scenario

A fully-fledged FTA arrangement is usually the first step taken on the path of economic integration. According to this scenario internal trade barriers between Palestine and Israel are abolished, but each side retains the right to set its own tariffs, quotas and apply the standards it may find necessary with non-member countries.

It should be noticed here that the Greater Arab FRA (GAFTA) was announced in March 1997 reflecting a revival of interest in economic integration at the regional level among the Arab countries. This agreement is an activation of an old one that was signed in 1981 along the lines of measures already agreed upon, and according to a specific timetable. Implementation was to start on 1 January 1998 and is supposed to

be completed in 10 years. *Palestine, being a member of the League of Arab States, is committed to GAFTA*. The agreement includes also the establishment of an institutional framework responsible for monitoring and supervising the implementation. Whether this agreement will work or not is an empirical issue and yet to be seen. *By its nature, the GAFTA does not put a restrain on the Palestinians to be involved in agreements that would stipulate the establishment of any trade arrangement between the State of Palestine and any other non-GAFTA-member.*

Whether under the fully-fledged FTA or CU scenario, there are three kinds of effects that must be mentioned. These are:

(1)***Static effects***: These are effects that take place because of the reallocation of resources amongst members of the block that *the more efficient producer, i.e. the country with a comparative advantage, develops at the expense of the less efficient members within the block and of the ROW*. These effects are static because they accrue once the block is formed. Afterwards they cease to exist. The static effects are captured in two concepts that are *trade creation* and *trade diversion.*

(2)***Dynamic effects***: These are permanent effects that result from the expansion of resources or from the increase in the productivity of existing resources via the expansion of trade. They refer to the relationship between trade and economic growth. Freer trade *enhances competition, technology transfer, larger pool of savings, larger markets and the related economies of scale, larger capital stock ... etc. and, therefore, will lead to increase in the rates of economic growth of the trading partners.*

(3)***Terms of trade with the ROW effects*** in the case of large trade blocks since such blocks can influence the prices of exports and/or imports. Such effects *can be ignored* under any trade arrangement for Israel and Palestine because of their relative small size with respect to the ROW.

(4)***Political gains***: These are increases in the well-being that accrue to the members of the trading arrangement because expanded trade and economic interdependency may increase the likelihood of reduced regional hostility among the member of the FTA or the CU.

Regardless of these mostly positive effects it must be emphasized on the outset that there are no guarantees that a country will be more efficient just because it became to be a member of a FTA or a CU. Robson (1993: 4) stresses this fact:

> "*Membership of an economic block cannot of itself guarantee a satisfactory economic performance to a member state, or to the group as a whole, or even a better performance than in the past, whatever the criteria employed.* The static gains from integration, although they may be significant, *can be – and often are – swamped* by the influence of factors of domestic or international origin that have nothing to do with integration. Moreover, many of the more fundamental factors influencing a country's economic performance are dynamic and these are unlikely to be affected by integration except in the *long run... Nevertheless, although integration is no*

panacea for all economic ills, nor even indispensable to success, there are convincing reasons ... for supposing that significant economic benefits may be derived from well-conceived and well-implemented arrangements for economic implementation."

. The static effects as mentioned above referred to the effects of **trade creation** and **trade diversion**. The former pertains to diverting the demand on a certain good by a local source with a high cost of production to another, more efficient source, from within the CU or the FTA. *In terms of this effect, both FTA and CU perform equally well and there is no ambiguity that the trade creation of either a CU or FTA will be positive for each partner*. The questions that must be of interest to the Palestinians (and that may be of equal importance to the Israelis) here are:

1- *Will the trade creation effect be such that Palestine will end up importing more from Israel than the other way around? There is no analysis until today that deals with this question.*

2- *What is the nature of the goods that will increase the trade deficit of Palestine with Israel? Are they for final consumption or are they intermediate goods that are going to be used for further processing?*

There is no doubt that the welfare effects that result from the trade creation will be symmetrical. But it matters a lot for the Palestinians if the trade creation effect will mean *higher imports* from or through Israel. For it means for them one thing: *more dependence on Israel*. Whether this is politically and socially desirable is subject to dispute. We think that such the Palestinians will have an interest to reduce this dependency to the minimum possible especially in terms of consumer goods that have substitutes from Arab or Islamic countries as long as cost differentials are not back washed by transportation costs.

Furthermore, in case of increased imports, Palestinian consumers will be better off but Palestinian producers will be worse off. If there is no mechanism to redistribute the accrued benefits in a more equitable form, the FTA or the CU will distort the given income distribution. These questions must be addressed before any arrangement is signed. Unfortunately, neither time nor resources allow us to deal with this issue. *Again it is recommended that a technical study be conducted as soon as possible to deal with these issues.*

Trade diversion effect, on the other hand, pertains to diversion of demand on a certain good from an external source with a low production cost to a less efficient source from within the CU or the FTA. In contrast to trade creation, trade diversion leads to a loss in welfare. This loss *can*, for a certain CU or FTA member country, be greater than the benefits that accrue from trade creation. Therefore, the overall balance of the CU or the FTA is an ambiguous one. *However, the magnitude of trade diversion would prove to be less under a FTA arrangement, with the condition that the external tariff levied by the Palestinians is less than that of the CET of the CU, i.e. less than the Israeli tariff rate*. Still, there is ***no automatic guarantee that the overall***

balance of the trade creation effect and the trade diversion effect will be positive.

There is still, however, a conceptual problem that is not addressed yet in any study in the Palestinian – Israeli context. *There is already a de facto hybrid of a CU and some elements of a FTA between Israel and Palestine.* Going from this status quo to a fully-fledged FTA will be associated with welfare losses most probably for the Israeli side. *The Israeli cumbersome procedures to deal with the Palestinian imports of the goods in Lists A1, A2 and B are most probably a manifestation of the Israeli concern about these losses.* The source of these losses will be in the form of some trade creation from Israeli originating higher costs goods to lower costs goods from Arab or Islamic countries. The magnitude of the loss associated with this trade creation is hard to be estimated at this stage and will vary directly with the cost differentials, the volume of trade affected by this trade creation for each good, and the number of goods that are affected by it. For the Palestinians, there might be an improvement in welfare. *In the long run, the fully-fledged FTA might prove to be more conducive to the strategic goals of the Palestinians, provided that these are defined as mentioned above.*

Such a scenario will enable the Palestinians to pursue a trade policy that is more independent from the Israeli CET and standards. Furthermore, it will enable them to provide some tariff protection for some of their industries and products. Provided that imported goods from other sources, whether for final consumption or for further processing, are cheaper than those imported from or through Israel the surplus of the Palestinian consumers will increase, the surplus of some Palestinian producers will decrease, and the government revenue from tariffs might increase. The welfare of the Palestinians will increase. The conclusion that the government revenue from tariffs will increase is different from the theoretical inference. The explanation of this conclusion relies on three reasons. These are:

1) Lower tariff rates will reduce the revenue loss due the well-known problem of under-invoicing. One can safely argue that lower tariff rates will induce ***more compliance*** on the part of importers.

2) The ***overall volume of trade through or from non-Israeli sources will increase*** and, therefore, the *total* revenue collected from tariffs will be greater. The revenue collected per each item imported might be lower than before due to the decline in the rates but the *volume of trade* will grow enough to offset the negative effect on revenue per each item.

3) The loss in revenue resulted from the use of the unified voucher approach will be reduced to a minimum because the trade created with low-cost trade partners instead of the high-cost de facto trade partner, i.e. Israel, will be larger in size than the remaining inter-trade between Palestine and Israel. The degree to which the ***fiscal leak can be reduced*** in this way will depend, of course, on the level of trade with new partners in proportion to that with Israel.

However, the move towards this scenario will be associated with administrative difficulties. ***Customs stations*** must be erected and financial sources must be allocated to finance the ***administrative procedures*** necessary for these stations. In the WB this

problem is more critical because of the geographical nature of the borders between Israel and Palestine. But in the WB and GS there will be a huge black market activity and smuggling. The impacts of these activities are difficult to be estimated.

Furthermore, ***the rules of origin from the Israeli side most probably will be more restrictive and cumbersome*** and the negotiations associated with these rules will not be easy. The Palestinians must be aware of the fact that Israeli merchants will tend to smuggle an increasing number of Jordanian products in the markets of the WB and probably in the GS. Such activities will be associated with high costs for the Palestinian products, thus, endangering their comparative advantage and, therefore, will aggravate an already existing unemployment problem for the Palestinians.

So, in general, the fully-fledged FTA scenario though might be conducive to the strategic goals of the development of Palestine, it might prove to be an expensive alternative which the economy cannot afford in the long run. We have also to remember that to protect local industries, there are more efficient mechanisms than tariff protection such as production subsidies, of which the deadweight losses are smaller. Therefore, we must turn to the next scenario, i.e. the fully-fledged CU scenario.

(4) The Fully-fledged CU Scenario

In principle, the fully-fledged CU scenario is ***not different*** from the fully-fledged FTA scenario in terms of the ***welfare analysis*** discussed above. Nor it is different in terms of the dynamic and other effects of the fully-fledged FTA scenario. However, the Palestinians, under the CU scenario will have ***no virtual control over the CET***, and ***less fiscal discretion***, and will have to follow the ***Israeli standards***, which are thought for a more developed economy. On the ***negative side*** also, the ***fiscal leak*** due to the system of revenue sharing between both sides is another ***serious problem*** that could not be ignored in the final status negotiations between them. All these problems will have serious repercussions upon the fiscal stance of the state of Palestine. And above all, the Palestinians will not be able to achieve their strategic goals of development. Therefore, the Palestinians will have to look for either ways to correct for these problems or to drop the fully-fledged CU scenario.

But, on the ***positive side***, the fully-fledged CU scenario is not associated with problems of customs stations erection and administration, smuggling activities, or restrictive rules of origin from the Israeli side.

All in all, the Palestinians would like to have more flexibility than what the fully-fledged CU scenario provided them with. That was the logic behind the A1, A2 and B lists stipulated for in the Paris Protocol. ***Therefore, it would still be wise to think of a hybrid of a CU and some elements of a FTA but with some mechanisms that correct for whatever shortfalls that have been so far identified as problematic to the Palestinians on the basis of the business-as-usual scenario*** to which we turn now.

(5) The Business-as-usual Scenario

The business-as-usual scenario is the CU and some elements of a FTA that has been stipulated for in the Paris Protocol. Although the experience of the Palestinians with the Israeli implementation of the Paris Protocol is not encouraging, it is not the more or less CU stipulated for by the Protocol *per se* is responsible for the poor results. It is rather the Israeli policies and practices on the ground which are the sources for failure. These policies were discussed above and must be brought to an end in order to utilize the potential of the CU scenario or any possible arrangement with potential. The problems and disadvantages of this scenario have been discussed above.

- *Is this scenario at all subject to correction?*
- *What can be done to correct for the shortfalls of the business-as-usual scenario?*
- *How can the Palestinians make sure that a new agreement will not be subject to control by the Israeli side and be hostage to policies and practices that are anti-developmental from their perspective?*
- *What institutional arrangements are necessary to create the factors responsible for success of any upcoming arrangement?*

The above discussion of the different scenarios indicates that the business-as-usual scenario is still superior to any other alternative. Contrary to the public perception, it is not this scenario that is responsible for the misery of the Palestinians. Rather it is the ***incomplete implementation*** of its clauses, and the ***equity problematic*** of the existing revenue sharing formula stipulated for in the Protocol.

By incomplete implementation, it is meant that the Israeli policies and practices, which have been discussed above, have nullified the scenario. ***Implementation*** of agreements must be ***complete*** to materialize its potentials. The move to achieve the goals of a developing economy must be enhanced by increasing the choices of this economy. Therefore,

- ✓ on the *supply side* ***the lists of the Protocol must be widened upon demand by the Palestinians to include more items on which the Palestinians can apply lower rates than the CET***, and
- ✓ on the *demand side* the Palestinian importers must utilize these lists to the maximum. This aim requires that the *procedures* to import items included in the lists must be simple, low-priced, and short in time. Politically, the Palestinians should be ***sovereign*** enough to control their border-crossing trade.

The ***equity problematic*** of revenue sharing can be solved through a well-known formula that has been successfully experimented elsewhere. The South African Customs Union (SACU) agreement includes the establishment of a pool into which all of the union's revenues from customs (on imports), excises and surcharges (on imports as well as local products on which such charges are imposed) are

deposited. The pool is managed by the Reserve Bank of the Republic of South Africa, which is an institution that enjoys a certain degree of autonomy (Kanafani: 1996, 52-55). The share of each of the four poor countries (Botswana, Lesotho, Namibia and Swaziland) is determined according to the following formula:

$S = [(m + d)/(M + D)] \times P \times 1.42$

where
S = the share of one of the four union members, say Botswana;
m = Botswana's imports from all sources, including from the other union countries;
d = Botswana's consumption of locally produced goods subject to excises and surcharges;
M = total imports of the union;
D = union's consumption of locally produced goods subject to excises and surcharges; and
P = total revenues in the common pool.

Dividing the share S from the total revenues of the pool by (m + d) we can convert it to the rate of revenue from the pool, r:

$r = [P/(M + D)] \times 1.42$

The factor 1.42 is known as the multiplier, and it means that the share of each of the four countries is increased by 42%. This, however, is not the only source of compensation. There are other features of the system of SACU that deserve attention. These are: a) *stabilizing formula*, and b) *payment procedures*. The member countries agreed in 1977 to implement a stabilizing formula that would prevent sharp fluctuations in the shares that the four poor countries get from the pool. This formula is based on estimating the rate of revenue from the pool, i.e. P/(M + D), is 14%. Thus, the average revenue that Botswana gets, for instance, about 20% (= 14% x 1.42). The stabilization formula requires that the average revenue should be kept within minimum and maximum margins of 17% and 23%, respectively. This implies that the actual value of the multiplier could now be different from 1.42.

For the matter of payment procedures, arrangements for *advance payment* were agreed upon in 1981. The rationale for this arrangement is based upon the fact that calculations on the basis of the above formula require a lot of time be invested in the collection of all necessary statistical data. The agreement stipulates that the annual share of each payment from the pool be divided into three installments. The first is to be paid during the same year and is equal to the share that country obtained before two years. The second part would be paid (or retrieved) after two years on the basis of available statistics. The following year, a final settlement of accounts takes place.

The elements of compensation in the revenue-sharing formula are very important and deserve some further attention. These elements are: a) compensation resulting from the inclusion of locally produced goods on which excises and surcharges are paid, b) compensation resulting from the inclusion of imports from the other union member countries in the sharing formula, and c) compensation connected to the multiplier.

a) Inclusion of locally produced goods on which excises and surcharges are paid in the pool and the local consumption of these goods into calculations prevent an important fiscal leakage. This formula ensures that these excises and taxes are transferred to the country in which the goods are consumed and not to the countries in which the production takes place. For example, excises on cigarettes that are produced in South Africa and consumed in Botswana are transferred to Botswana.

b) Inclusion of imports from the other union countries in the sharing formula compensates for three forms of losses inflicted upon the economy of, say, Botswana. These losses may include one or all of the following:

   1) *Loss from rising prices as a result of trade diversion from cheaper sources of import to more expensive ones* in South Africa because of customs protection. Notice that the more Botswana imports from South Africa's local products, the greater "m", but without much effect on the revenues of the pool.

   2) *Loss arising from re-exporting goods that were originally imported to South Africa where the customs tariff is paid.* Taking this re-exporting into consideration would certainly increase "m". In addition, the customs tariff paid on it (upon import from the rest of the world to South Africa) increases the revenues of the pool.

   3) Finally, *the loss arising from the exportation by South Africa to Botswana of local products containing imported inputs that were cleared through the customs of South Africa.*

c) The ***multiplier*** means in practice an increase by 42% in the share of each of the four countries (after taking into account the customs, excises and surcharges borne by each of their nationals on the goods and services that they consume, and after considering the forms of compensation mentioned above). The purpose of the multiplier is to compensate the concerned countries for three forms of losses that arise from their joining the customs union with the Republic of South Africa. These losses are:

   1) The effect of *polarization* due to the trade integration between two economies with varying degrees of development which could lead to the concentration of resources and centralization of growth in the more developed economy of the two. Consequently, some *reallocation of resources is necessary for equitable growth.*

   2) The loss arising from *giving up fiscal discretion* on the part of the weaker economy. Take, for example, the aspects that have to do with infant industries. South Africa agreed on a protectionist non-reciprocal clause with respect to infant industries in the four countries, whereby these countries can impose an additional tariff (for eight years) on imports from South Africa which compete with the products of their own budding industries. It became clear in some cases that the imposition of such tariffs is impracticable because of their high social costs. *Hence, the increase in the revenues is to allow for the provision of direct subsidy to these industries as a substitute for providing them with customs protection.*

   3) Finally, the multiplier aims at giving additional compensation for the effect deflecting trade in favor of South African products. Notice that the existence of a CET forces the four countries to buy products from South Africa that are

more expensive than similar products from the rest of the world (exclusive of tariffs). Although part of this loss is compensated for by increasing "m", the revenues of the pool itself do not increase. If these countries should choose to import from the rest of the world, then both "m" and the pool's revenues "P" would increase. Consequently, the increase in the share of revenue represents a recovery of those amounts that consumers pay in the four concerned countries as subsidies to the industries of the rich partner country.

The SACU Agreement has attracted a considerable amount of academic interest especially to answer the questions on whether a multiplier of 1.42 represents a fair level of compensation to the weaker side for the negative effects of the CU with the dominant party, and second whether it is possible for the four countries to obtain the same revenues in the case they were to withdraw from the CU and impose their own customs tariffs. There are no clear-cut answers. Nobody knows where this magic 42% came from. In any case, all studies, whether radical or conservative, take the revenue-sharing formula of SACU seriously and consider it adequate for the compensation purposes, regardless of how equitable it is.

Therefore, we recommend that the business-as-usual scenario to be corrected on institutional, equity and more freedom grounds. This means a three-polar correcting mechanism:

(1) To widen and add to the lists of the Paris Protocol based on a mutual understanding of the Palestinian economic needs.

(2) To use the SACU arrangement of revenue-sharing formula for its equitable role.

(3) To create and institutionalize a supra-national agency of the governors of the central banks and their assistants in both independent countries to set a conflict- resolution mechanism that is conducive to the mutual interests of both sides. This agency might become a corner building block towards establishing a joint economic cooperation council between the two states in the future.

IV. Summary and Conclusions:

Israel should have a vested interest in the growth of the Palestinian economy which will have positive effects on the growth of the Israeli economy itself and will enhance the competitive advantage of both economies. What Israel will have to contribute towards the stimulation of the Palestinian economy is not only based on altruistic motives, but rather it should be more driven by the fact that the utility and welfare functions of Israel is mutually dependent on the utility and welfare functions of the Palestinian economy.

The correction of the business-as-usual scenario will save both sides the social costs of disintegration to a lower level of trade arrangement and, therefore, is based on economic calculus of benefit-cost analysis. This correction entails fewer costs and can be conducive to the development needs of the Palestinian economy. These corrections by their nature are not minimal remedies of the status quo. The failures of the Paris Protocol were not caused by the Protocol per se. Rather, these failures are due to the

continuous Israeli formal political mentality of a superior occupier full of one-sided vision that peace could be attained by a policy of coercion and hegemony. What the Paris Protocol needs in addition to the corrections suggested is a mentality of partnership and the recognition of both sides interests.

For the Palestinians, it must be asserted that there are always more efficient means to protect infant industries and to provide the necessary elements for the development of their economy. Trade protection is socially a high-cost alternative. Production subsidies for these industries can be provided for in the revenue-sharing formula described above. Freedom in the choice of the trade policy does not necessarily mean that disintegration from the Israeli economy would move us to a higher welfare position. What is rather needed is to make sure that the character of trade integration, and later the economic integration, is based on more equitable grounds that are conducive to what we really want to achieve.

Palestinian National Authority

The Economic Palestinian Position Paper Prepared by

Naser A. Tahboub

Introduction:

Our believe and faith in the importance of the political and economic independent, cooperation and coordination between the state of Israel and the State of Palestine, we reaffirm the position in this paper.

As result of the determination to move the peace process forward and the existence of good faith between the parties involved. We based our paper on the reality of the full sovereign Palestinian State, besides the State of Israel practicing its full sovereign and economic polices through clear borders and cross points.

Accordingly, we reiterate in this paper our political and economic decision, which takes into account the gains from the use of the Israeli labor market, exportation to Israel and the use of the Israeli economic facilities. Taking into account the potential economic losses resulting from tendering with the Israeli currency and importing goods and services from Israeli.

There is an argent need to implement the concepts of the most favorable nation and the preferential treatment for flow of goods and services between the two countries for the sake of regulating, organizing and determining the economic and commercial relations between both countries.

The back bone of such arrangements should be based on the freedom of regulating economic and trade polices and singing Trade Agreements between two separate independent states with an ultimate desire to coordinate some of the trade polices for the benefit of both economies without prejudicing the peculiar features of both entities.

This paper, indeed, does not ignore the volume of trade transactions among both entities relating to the flow of goods and services according to the market needs.

It is crystal clear that the aim of this paper is to present a final Palestinian independent vision relating to the future economic relation with Israel based on the full and complete Palestinian economic sovereignty in the field of fiscal and monetary Policies.

Principles and basis of the Palestinian position:

1- The full implementation of the United Nations Decisions regarding the Palestinian issue, and the right of self determination of the Palestinian people, with special emphasis on resolution 242, 338, 181.

2- Recognizing the peculiarity of the Palestinian economy, and the economic growth in comparison with the Israeli economy, in addition to the damages caused as result of the Israeli domination to the Palestinian market.

3- Reaffirming the significance of fiscal and economic coordination between both governments and its implementation on the ground.

4- Guaranteeing the free flow of individuals and goods.

5- To insure the preferential treatment of goods and services between both countries.

6- The need to protect infant industries.

7- Encouraging foreign investments in Palestine either through Arab investors, overseas or joint projects.

8- The need to insure the rights of individuals, establishments and governments by establishing a sufficient watch dog on the government level to issuer the implementation of the agreed arrangements.

9- Stressing the need for concrete measures to issuer the full implementation of the agreements signed between both parties.

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9- Stressing the need for concrete measures to issuer the full implementation of the agreements signed between both parties.

10- To issuer free flow of goods and services between the West Bank and Gaza

11- Independence in regulating the Customs, tax rates and tax polices.

12- The commitment to participate in the World Trade Organization, the World Customs Organization, International conventions and trade agreements between different countries.

Box 1

1- Regulating, explaining and specifying the future of economic relations between Palestine and Israel based in a long-term strategy.

2- The independence of the Palestinian economy as an integrated part and to guarantee such independence based on the complete freedom in determining its overseas relations.

Fiscal arrangements

The fiscal arrangements are highly dependable on the nature of economic relation, which we believe should be based on the two state solution with an obvious priority to economic reciprocity which is also connected with the political solution, according to the following:

Indirect Taxes:

The existence of an independent Palestinian State, indeed, means the existence of borders. This requires a mode of control over the flow of goods and individuals, this process is manifested in the Customs Stations which will handle the importation and exportation process.

To recognize the clearance system for government revenue collections (VAT, purchase tax, other...).

In this regard, it is important to pin point four possible methods for goods entering the Palestinian market:

Method one:

In this alternative, the subject matter goods are imported from out side the Palestinian and Israeli borders directly via a Palestinian passage.

In this case, goods should be treated according to the Palestinian trade polices and should be regulated independently, with full Palestinian control in compliance with the international trade regulations and / or agreements.

Method two:

In this option, the goods are imported to the Palestinian market through the Israeli crossing points:

We can illustrate it in one of the following alternatives, which is self-explanatory:

Options one: Clearance of goods to be done in Israel by Palestinian custom officials.

In this regard the Palestinian custom officials will control the process of clearance, checking documents and evaluation procedures to be done inside the Israeli trade facilities designed particularly for the use of the Palestinian goods.

It should be noted that the overall process would be subject to the Palestinian regulations and the applied trade policy.

Option two:

To transfer the goods to Palestine by Transit form the port and / or airport to the Palestinian custom point according to the following:

1: To allow Palestinian custom brokers and / or Palestinian Merchant to be present at the crossing point.

2: The control over carriage and shipment will be within the administration of the Palestinian Authority.

3 To issuer the free, unhampered flow of goods to the Palestinian market without being smuggled to the Israeli market

Option Three:

Palestinian Bonded warehouses in Israel.

According to this option a special storage yard should be established inside the Israeli passages and / or custom point for storage of goods directed to the Palestinian territories.

This should be done according to the following stipulations:

1. The warehouses should be under the exclusive and sole authority of the Palestinian Customs.

2. The customs clearing process should be conducted and regulated by the Palestinian Customs authority.

3. The entry of such goods to the port and/ or warehouses would be done in smooth, easy and clear procedures.

Method Three:

Direct import from the Israeli Market.

The norm in this process of importation is to import from a state to state according to clear procedures through the customs border points between both sides.

The aforementioned should be done through a special unified invoice or Custom Declaration to be agreed upon between both governments.

The document should comprise the followings:

1. Origin of goods (the goods should be only Palestinian or Israeli)
2. The quantity of goods.
3. Classification the goods according to the H.S system
4. The value purchase tax.
   - In this regard a formal to guarantee the collecting of all fees and purchase tax should be established.

Method Four:

Re-exportation of imported goods from Israel to the Palestinian market.

The implementation of the governmental and market policies according to the rules of Origin top be agreed between the parties in due time. Insuring the refund of all dues by using the unified invoice which shall include the following:

1- All fees paid
2- Tax paid including VAT
3- Purchase tax
4- Customs

- ***The role of Customs Stations:***

Goods moving from Israel to Palestine need to pass via certain custom stations. This indeed requires the creation of Palestinian Custom stations under the Palestinian mandate, rules and regulations. Together with Israeli stations administrated by Israel.

The role of the Custom stations is the followings:

1- To Specify The Origin Of The Goods

2- To Approve The Value

3- To approve that all licenses required have been meet together with specification of goods.

4- To implement the market and trade policy

5- Classification of Goods.

6- To adopt the H.S system and authentication of documents as one state dealing with an equal partner.

7- Other related activities.

- ***The government to government Transaction:***

An argent need to coordinate the Trade polices between both parties, requires the existence of common trade transaction which interconnected. Such transaction may be represented by the government purchasing water, electricity, telecommunications, and other socioeconomic goods like, education, health, and environment.

These will be dealt according to the following principles:

1- Preferential treatment.

2- A DOP Declaration of Principles should be drafted which will insure continuance coordination, cooperation and the implementation.

3- Not to impede the implementation of joint economic projects in both sides, and between both parties and overseas governments.

BOX 2

The solution should be based on :
1- Two independent States.
2- Effective Customs Stations and effective procedures.
3- Independent customs and Trade polices for each side with distinct procedures by developing a special unified invoice and/ or amend the unified invoice and / or to use a common Custom Declaration.
4- An agreement to use the trade facilities for each side, and the implementation of such arrangements
5- The use of the rules of Origin.

- ***Monetary arrangements:***

A sound economic trade policy can not be implemented on the ground without a clear effective monetary policy.
Lots of bad effects occurred as result of using three legal tenders in Palestine (the Israeli NS, the Jordanian deniar, and the US dollars).
Most of the transactions were made in the Israeli NS this resulted is many bad impacts on the Palestinian economy:

1- The lack of clear economic monetary pollicies.

2- The increase of the deficit in the Palestinian Trade balance.

3- Losses of revenues resulting from revaluation in US Dollars.

4- Losses of revenues resulting from adopting the open market policy.

Above all, this resulted in what is called the Seigniorage effect, which has its impact on the trade balance.

Indeed this is manifested in times of devaluation of the NS which will cause a reduction of the deficit in trade balance and the increase of such deficit in the Palestinian trade balance.

The explanation for this phenomenon is that, the devaluation of the NS does not result in the increase of real increase in the Palestinian economy, on the contrary it will only benefit the Israeli economy. Which is the country, which export its currency not the recipient country, which is Palestine in this context.

According to the mentioned above, the Monterey arrangements should be conducted to serve the Palestinian economy, according to the following formal:

1- The right to issue a Palestinian currency and the establishment of a Palestinian Central Bank (PCB)
2- The full right to use the open market policy and to issue the treasury bonds.

3- The right to fix or unfix the currency rates.
4- The full freedom to use the adequate currency in case of the process of collecting revenues.
5- The right to fix interest rate on loans and investments.

- ***Compensation:***

In this regard reference should be made to all the history of domination and the extensive damages to the Palestinian economy as a result of occupation. This caused lots of damages, which were not taken into account in previous arrangements, as result of political circumstances.

We believe that time is adequate to arrange the issue of compensation, this issue should be solved according to the followings:

1- To take into account the previous and future compensations, particularly the rights of Palestinian workers.
2- The compensation as result of the use of trade facilities in the past and the future.
3- The compensation as result of the use of the Israeli currency.
4- Compensation of the Palestinian Economy as result of the domination and losses which occurred since 1967 up tell now according to a scientific method which should be agreed between the parties.

איגוד לשכות המסחר
ארגון העסקים של ישראל

לקראת הסכם קבע

FEDERATION OF ISRAELI CHAMBERS OF COMMERCE
ISRAEL'S BUSINESS ORGANIZATION

25 ביולי 1999

כל/ 67767

ישראל והרשות הפלסתינאית -

לקראת הסדרי קבע כלכליים

1. <u>מבוא</u>

חידוש תהליך השלום וגיבוש מתכונת הסדרי הקבע בין ישראל והרשות הפלסיתניאית יעמדו על סדר יומה של ממשלת ישראל בעתיד הקרוב . ניטבע הדברים , לקביעת אופי יחסי הגומלין הכלכליים הרצויים בין ישראל והישות הפלסטינית נודעת חשיבות מיוחדת , וזאת לאור השלכותיה הנרחבות על השגת ביטחון , יציבות אזורית והצלחת התהליך המדיני בכללותו. שאלת היסוד המרכזית העולה בהקשר זה האם יש להוביל להסדר של קשר הדוק בין המשקים המושתת על מעטפת מכס אחידה תוך קיום גבולות כלכליים פתוחים (בדומה למצב כיום) , או לחילופין לשאוף להסדר של הפרדה רגולטורית הדרגתית בין המשקים , תוך יצירת גבולות מכס חיצוניים נפרדים . מסמך זה מתמודד עם סוגיה זו תוך בחינת הסדר הביניים הקיים והתאמתו לצורכי הצדדים כיום , מצביע על המסגרת והעקרונות הרצויים להסדרי הסדרי הקבע הכלכליים , ומפרט את התועלות הטמונות במבנה ההסדר המוצע לכל אחד מהצדדים.

2. <u>הסדר הביניים הכלכלי - תמונת מצב</u>

המסגרת הכלכלית שבהסדר הביניים התקף כיום בין ישראל והרשות הפלסטינית עוגנה במסגרת הסכמי פריז בשנת 1994. הסדר זה היה נגזרת מיידית של

איגוד לשכות המסחר
ארגון העסקים של ישראל

לקראת הסכם קבע אי הודאות לגבי מעמד הקבע המדיני של האוטונומיה ביחס לגבולותיה הגיאוגרפיים בזמן חתימתם, ולפיכך המשיכה את מעטפת המכס שנכפתה על השטחים מאז 1967 , כאשר אחד העקרונות המרכזיים שבו הוא תנועה חופשית של סחורות בין שתי הישויות ללא מגבלות מכסיות ומגבלות לא מכסיות . הסדר זה גם שיקף את הגישה כי גבול כלכלי פתוח לחלוטין הוא אפשרי וגם רצוי , יביא בסיכומו של דבר להידוק הקשרים ושיתוף הפעולה הכלכלי בין הצדדים , ישפר את רווחתם הכלכלית ויוביל להשגת יציבות אזורית.

ככלל , הסכם פריז כמעט ואינו מעניק לרשות הפלסטינית סמכויות בתחום סחר-חוץ , כאשר הסמכות לגבי קביעת מכסים נותרה בידי מדינת ישראל . ההסכם גם מדגיש כי לרשות הפלסטינית אין ולא הייתה מערכת מכס נפרדת או מדיניות הסדרת יבוא עצמית .

אולם יחד עם זאת יש בו בשורה וחידוש מהותי מצד ישראל - הכרה בזכות הפלשתינאים לניהול מדיניות סחר-חוץ עצמאית לגבי רשימה מוגבלת של מוצרים (המפורטים ברשימות A1,A2,B) .

ניתן היום לומר בודאות כי הסדר הביניים הכלכלי סובל מכרסום חמור בהשגת המטרה שעמדה בישום ההסכם - תנועה חופשית של סחורות ושיתוף פעולה כלכלי בין ישראל והרשות הפלסטינית . עקרון התנועה החופשית של סחורות נפגם על רקע צעדים שונים שננקטים והמונעים את קידום הסחר בין הצדדים . זאת כמפורט להלן:

- הגבלות על שיווק והפצת מוצרים ישראליים בשטח הרשות הפלסטינית כגון: שיווק באמצעות סוכן מורשה , רישום ורישוי הסוכנים והמפיצים, מתן רשיונות לסוכנויות לתושבים פלסטינים בלבד ,וחיוב תושבי חוץ לשווק בתחומי הרשות באמצעות סוכן בלעדי .
- הגבלות על רישום חברות ישראליות בשטחי הרשות הפלסטינית
- הגבלות לגבי מיזמים משותפים עם ישראלים . קיומת דרישה שהשותפים הפלסטינים יהיו בעלי 51% לפחות מהמניות בחברה המשותפת.
- דרישה מיבואנים ישראליים להציג רשימוני יבוא ומיצרנים ישראליים להגיש תעודות מקור במעבר סחורות לעזה.
- קיום מכשולים לסחר שמקורם בסגרים ובבדיקות ביטחוניות שמפעילה ישראל (לטענת הרשות) .

ההגבלות אלה בתחום הסחר מקורם בהבדלים בתפיסת העולם הכלכלית ובמכלול האינטרסים בין הצדדים. ישראל מעוניינת לממש את מלוא מעטפת המכסים והתנועה

איגוד לשכות המסחר
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לקראת הסכם קבע החופשית תוך צמצום מחסומי הסחר , ומאידך הרשות הפלסטינית אינה מקבלת את המודל האמור באופן חד- משמעי , ומאמצת הגבלות בלתי מכסיות בכדי להעצים את הריכוזיות השלטונית בתחום הסחר.

הניסקנה המתבקשת אם כן , היא שמהפערים העמוקים וההבדלים המשמעותיים בין המשקים השכנים - הישראלי והפלשתינאי - נגזרים צרכים שונים וההעדפות שונות **בניהול מדיניות סחר חוץ**. מכאן, שמעטפת המכסים אינה עומדת בבחינת פתרון יעיל (לפי פארטו). זאת על אף ששיתוף פעולה נרחב עשוי לתרום לרווחתם הכוללת של שני המשקים.

3. <u>הנחות ועקרונות למסגרת הסדר הקבע הכלכליים</u>

מסגרת הסדר הקבע הכלכלי צריכה להוות בסיס יציב ואיתן למערכת קשרי גומלין עמוקים שישקפו את התועלות ההדדיות משיתוף פעולה כלכלי ומסחרי בין שני משקים שכנים בעלי ניסיון משותף עשיר. ציינו כבר שמודל מעטפת המכסים אינו מהווה כיום פתרון יעיל למסגרת הסדר כלכלית רצוי. להערכתנו ,מסגרת כזו חייבת להתבסס על העקרונות וההנחות הבאים :

- **שיקוף מעמד הקבע המדיני של הרשות הפלסטינית** - מאז החתימה של הסכמי אוסלו (המדיניים) והסכמי פריז (שהם הנגזרת הכלכלית) , ביססה הרשות את מעמדה המדיני והפוליטי - הפנימי, האזורי והבינלאומי . לפיכך הסכם הקבע הכלכלי יהיה חייב לבטא מגמה זו.
- **קביעת גבול פיסי ברור ככל שרק ניתן בין ישראל והרשות הפלסטינית** - לישראל יש עניין קיומי בכך שהישות הפלסטינית לא תהווה איום בטחוני על עתידה . הניסיון שנצבר בעולם מלמד שהדרך הברורה להסדרת יחסים בין תנועות לאומיות עוינות היא באמצעות גבול ממשי בין עמיהן . יש לזכור כי הן המשק הישראלי והן המשק הפלסטיני הם קטנים מאוד בעולם הכלכלי המאופיין בהעמקת תהליכי הגלובליזציה לרבות בתחומי תנועות הון ויידות עובדים . על אף הקרבה הגיאוגרפית קטן היתרון מעבודתם של פלסטינים בישראל דווקא . במקביל קטן היתרון ההדדי מכך שדווקא הון ישראלי הוא זה שיושקע בתחומי הרשות . השגת העד של הגדלת ההתחרות הפלכלית לישראל

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לקראת הסכם קבע הפלסטינית על בסיס קשרי גומלין עמנו יכולה להתבצע על בסיס יצוא מקיף של סחורות מהמשק הפלסטיני לישראל כתחליף ליצוא שירותי עבודה .

- **הפרדה רגולטורית בין המשקים** - הכרה מרחיבה כל הניתן מצד מדינת ישראל בריבונות הישות הפלסטינית בגבולה , תוך צמצום למינימום של ההגבלות הקיימות על הרשות הפלסטינית בנושאים כלכליים החורגים מהיבטים ביטחוניים (מים ,תקשורת, תעופה) יביאו ליצירת תנאי התשתית הנחוצים להפרדה רגולטורית בין המשקים. הפרדה זו תוביל להפחתת התלות ההדדית השוטפת שהינה כמעט סימביוטית מהצד הפלסטיני , ותקהה בטווח הקצר את הזיקה המיידית כמעט, שקיימת כיום בין המישור הפוליטי והכלכלי. דוגמא טובה לכך ניתן לראות ביבוא העובדים הזרים מארצות שונות אשר התירו את התלות בכוח עבודה פלסטיני בענפי החקלאות והבניין.
- **ניהול מדיניות סחר-חוץ עצמאית ע"י הרשות הפלסטינית** - הענקת מלוא הסמכויות לרשות הפלסטינית לניהול מדיניות סחר- חוץ עצמאית אינה בבחינת אקט סמלי של מתן ריבונות מדינית . כורח זה הוא שילוב של מספר גורמים : פגיעה מכשית באפקטיביות של הסדר הביניים הכלכלי על רקע קיומה של מחלוקת עמוקה ומהותית בתחום הסחר, תמיכה בינלאומית עקיפה בדרישת הרשות הפלסטינית לעצמאות בתחום מדיניות סחר-חוץ המוצאת ביטויה בכינון הסכמי אזור סחר חופשי/ העדפות עם האיחוד האירופאי וארה"ב , התחרות הגוברת בשווקים הבינלאומיים והתעצמות מגמת הגלובליזציה בשיווק , אשר תביא להקטנת תופעת היבוא הבלעדי בשנים הבאות.
- **פיקוח ובקרה על גבולות הסחר** - הענקת שליטה עצמית בניהול מדיניות סחר- החוץ לרשות הפלסתינאית תחייב מיסוד מנגנון הפיקוח על הסחר בינה לבין המשק הישראלי. הפיקוח הקיים על מעבר סחורות מהרשות לישראל הוגבל בעבר, בעיקר לתוצרת חקלאית. עובדה זו מצביעה על פוטנציאל הסיכון **הנמוך** שגלום במשק הפלשתינאי על המשק הישראלי, בהיבט התחרותי. יכולת הפיקוח על תחומי השלטון- הפלשתינאי בהתבסס על אמצעים קיימים, נמצאה יעילה למדי, כאשר נעשו מאמצים למניעת כניסת עובדים מהשטחים על רקע בטחוני. עולה אם כן, כי החלטה על מיסוד הביקורת על גבולות הסחר היא ברת ביצוע, ללא קשר הדוק עם אופיו של הגבול המדיני.
- **כינון הסכם סחר חופשי** - המשק הפלסתינאי קטן מאוד , צעיר ובלתי מפותח , וחייב להסתמך לרווחתו ולפיתוחו העתידי על היקפי יבוא ויצוא נרחבים. אפשרויות היצוא הריאליות מבחינתו גלומות בסחר עם ודרך ישראל. הצמיחה הכלכלית והשגת שיפור דרמטי ברווחה הפלסתינאית תתאפשר ע"י פיתוח יוזמות עסקיות שתכליתן יצור מוצרים ליצוא בעיקר בתחומי תעשייה ,תוצרת חקלאית מודרנית מתועשת ושירותי תיירות .

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- **ניהול מדיניות מוניטרית עצמאית ע"י הרשות הפלסתינית** - הנהגת מטבע נושאת משמעות סמלית של ריבונות מדינית , שנתפשת כתועלת בלתי מבוטלת בעיני הרשות מהלך זה , מעבר להשלכות הכלכליות הנובעות מכך. מההיבט הכלכלי המשמעות בתחום כמות הכסף הריביות ושער החליפין.

אנו מעריכים איפוא , שהסכם קבע כלכלי המושתת על הפרדה מכסית ומוניטרית בין ישראל והרשות הפלסיתינאית בצד קיומו של הסכם אזור סחר חופשי בין הצדדים וקיומו של גבול פיסי הלכה למעשה יהווה בסיס איתן לקשרי גומלין עמוקים ולשיפור הבסיס המבני לשיתוף פעולה כלכלי ומסחרי פורה בין הצדדים בעתיד.

4. <u>השלכות ההסדר המוצע על המשק הישראלי</u>

המשק הישראלי הינו פתוח, מתקדם ודינמי ומתאפיין בתוצר מקומי לנפש ($16,300) וברמת צריכה פרטית לנפש ($10,300) גבוהות יחסית בהשוואה בינלאומית . מאידך המשק הפלסתינאי קטן בהרבה בצורה משמעותית ביותר, כאשר התוצר מגיע לכדי 1/20 מהמשק הישראלי , ואילו רמת התוצר לנפש מגיעה לכדי כ- 1500 דולר. ככלל, בגלל ההבדלים האמורים בגודליהם של המשקים , הרי שההפסדים הצפויים לישראל מצמצום הקשרים עם הרשות הפלסתינאית מההסדר המוצע הם זעירים ביחס למשאביה.

היקפי הסחר - על פי אומדני הלמ"ס, היקף הייצוא הישראלי לשטחי הרשות יציב בשלוש השנים האחרונות, כאשר היקף ייצוא הסחורות נע סביב 1.6 מיליארד דולר, מול ייבוא בהיקף 280 מיליון דולר[1]. הייצוא לרשות הפלשתינאית מהווה פחות מ- 8.0 אחוזים מסך ייצוא הסחורות הישראלי, והוא נמצא במגמת ירידה אשר צפויה להימשך בטווח הבינוני כל עוד רמת החיים במשק השכן לא תעלה ולא ייווצרו התנאים הפוליטיים לשיתופי פעולה בתחום הפיתוח והתשתית. מנגד החשיבות לישראל של היבוא מהרשות הפלסיתינאית

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[1] אומדני הלמ"ס המבוססים על נתוני מעיים נוטים לחסר , נתונים לא רשמיים מצביעים על גידול ניכר בפעילות בין הרשות וישראל.

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לקראת הסכם קבוע זעומה ביותר. זאת לאור העובדה שהיקפו של יבוא זה מיסתכם בשיעור של כ- 2 אחוז בסך הייבוא הכולל של המשק הישראלי.

הסדרי הסחר הקיימים של מדינת ישראל - אין להערכתנו בהענקת סמכויות לניהול מדיניות סחר חוץ עצמאית בידי הרשות, פגיעה בהטבות שיש לישראל בהסכמי הסחר הקיימים שלה עם מדינות שלישיות. פרט, לאי בהירות ביחס למעמד התוצרת הישראלית שמיקורה ביישובים שבשטחי הגדה ורצועת עזה. סביר כי נקודה זו תבוא בנקל על פתרונה במסגרת הסדר קבע הכלכלי , שכן היא התעוררה כסנקציה אירופאית פוליטית/מדינית על ישראל.

כוח עבודה - ערב החתימה על הסכמי פריז המשק הישראלי סבל ממחסור בכוח עבודה זול בענפי החקלאות והבנייה בעיקר עקב הסגרים החוזרים בתקופת האינתיפאדה ומלחמת המפרץ. מאז, נמצא לכוח העבודה הפלשתינאי תחליף בדמות העובדים הזרים ממזרח אירופה ומתאילנד. לפיכך בחשבון הכלל- משקי , הנזק מצמצום מספר העובדים הפלסתינאים במשק הישראלי אינו גדול . יחד עם זאת אין להתעלם מהבעיות החברתיות הקשות המתלוות לתעסוקת העובדים הזרים במדינת ישראל.

4.1 <u>היבטי יצוא</u>

4.1.1 השימוש בשירותי ייבוא ישראליים - פעילות התיווך של סוכני יבוא ישראליים שהיוותה בעבר משקל נכבד בייצוא לרשות - מצויה במגמת ירידה תלולה מאז הסכמי פאריז. המגזר העסקי הפלשתינאי רוכש זיכיונות ורשיונות לייבוא וישיר והפצה. איננו רואים כאפשרות מעשית, הפקעה מחדש של זכויות הייבוא הישיר, אך הטלת עליהן מרצון - מצד הרשות. מגמה זו תואמת את הירידה הצפויה במעמדו של היבואן הבלעדי בישראל בעתיד נוכח התעצמות תהליך הגלובליזציה בתחום השיווק.

4.1.2 ביקושי המשק הפלשתינאי לתוצרת ישראלית - עיקר הביקושים לתוצרת ישראלית תרכזים בענפי המוצרים הבסיסיים ומוצרי התעשיות המסורתיות. רמת ההגנה המכסית הנוכחית על ענפים אלו אינה גבוהה, ומתוכננת להמשיך ולרדת בהדרגה. כיוון שכך, לא צפויה ירידה דרמטית בביקוש לתוצרת הישראלית בשל הסרת מגבלות מכסיות על ידי הרשות.

בטווח הארוך צפויה מגמת ההתכווצות בפעילות המקומית של ענפים אלו להימשך. פוטנציאל שת"פ הפעולה עם המשק הפלשתינאי בענפים אלו גבוה, ואפשר שיהיה בו כדי ל"החיותם": כיוון שעלויות הייצור ברשות נמוכות מאוד יחסית, והעתקת חלק מהפעילות

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היצרנית לשטחה תשפר באופן ניכר את הרווחיות והתחרותיות של ענפים אלו, בארץ, ובשווקים הבינ"ל.

4.1.3 תעשיות ינוקא- האפשרות שהרשות תבנה מחסום מכסי המכוון כנגד חדירת תוצרת ישראלית על מנת לאפשר את התפתחותה של התעשייה פלשתינאית (הגדרת "תעשיות ינוקא") , היא להערכתנו האיום הממשי יותר. לפיכך הטיפול בסוגיה זו יחייב הגדרות מדויקות ,מלאות ומפורטות בהסכם אזור הסחר החופשי בין הצדדים. יש לזכור שלמעשה, בכוחה של הרשות להחרים תוצרת ישראלית ולמנוע את שיווקה הרחב גם בתנאי הסחר הקיימים, אם תראה בכך צורך, והיא אכן עושה זאת ברמה המקומית.

4.2 <u>היבטי יבוא</u>

4.2.1 יבוא חקלאי - האיום העיקרי הנשקף מיבוא תוצרת של המשק הפלסיתנאי , התרכז בעבר בענף החקלאות. במהלך שנת 98 הוסרו המגבלות על ייבוא תוצרת חקלאית משטחי האוטונומיה, בהתאם להסכמי פריז. ענף החקלאות נערך בפרק הזמן שבין חתימת ההסכם ויישומו תוך התאמת הרכב התוצרת שלו לקראת החשיפה.

פתיחת הסחר החקלאי לא הביאה להשפעה ניכרת על החקלאות הישראלית. שכן, התוצרת הפלשתינאית היא באיכות נמוכה בהתאם למחירה הנמוך. לחשיפה המשק הישראלי לייבוא תוצרת חקלאית פלשתינאית יש פוטנציאל השפעה ממתן מדדי מחירי הירקות והפירות, ודרכם על מדד המחירים לצרכן .

4.2.2 יבוא מוצרי ענפים מסורתיים - גם בענפים מסורתיים בהם חדרו סחורות מתוצרת פלשתינאית לשוק הישראלי - מזון, טכסטיל, נייר ומוצרי בוייה לא מדובר באיום של ממש על התעשיה הישראלית המקומית. המוצרים הם "נחותים" בדרך כלל (מאיכות נמוכה אשר הביקוש אליהם יורד עם עליית ההכנסה), ונתח השוק שלהם נמוך מאוד - פחות מאחוז אחד, לפיכך האיום התחרותי על התוצרת הישראלית במשק הישראלי הוא שולי.

4.2.3 אפשרות להחדרת מוצרים מארצות שלישיות - מדובר באיום ממשי יותר מצד הייבוא מהרשות במידה וייוצרו פערים בשיעורי המכס של שני המשקים. על מנת להבטיח אטימות של גבולות הסחר תידרש השקעה ניכרת בפיתוח מערכת בקרה. סביר, כי מערכת מקבילה תידרש משיקולים ביטחוניים, ולהערכתנו ניתן יהיה לזכות במימון בינלאומי לטובת העניין.

4.2.4 יבוא מוצרים המתבסס על פערים במיסוי עקיף - יבוא זה עשוי לעורר בעיה חמורה של עקיפת מערכת המיסוי הישראלית. על כן, הסרת מגבלות סחר בין המשקים מחייב שמירה על אחידות כללית ברמת המיסוי העקיף (מע"מ מיסי קנייה וכו').

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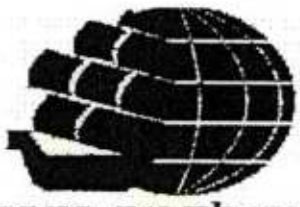
כיום אנו עדים לבעיה חמורה של הטיית תקבולי מסי קנייה מישראל לרשות הנעשית באמצעות דיווח שקרי על יעד הייבוא - היעד המוצהר הוא האוטונומיה, ובפועל חוזרת הסחורה לארץ. תקבולי המס מתחלקים בין היבואן הרשות והלקוח הסופי.

4.2.5 תחום התקינה והרישוי - התרת ייבוא עצמאי מצד הפלשתינאים תהפוך את הבקרה על עמידת מוצרים המיובאים מהרשות בדרישות התקינה או הרישוי הישראליים , לרחבה ומורכבת בהרבה מכפי שהיא כיום. נראה כי לא יהיה בכוחה האדמיניסטרטיבי של הרשות לאכוף את הסטנדרט הישראלי, גם אם תרצה בכך. הפתרון יכול להיות מורכב מפיקוח במעברי הגבול ומסיוע ישראלי בפיקוח ובקרה כבר בשלבי הייצור או ההפצה בתחומי המשק הפלשתינאי.

4.2.6 ייבוא שירותי עבודה: כאמור, המשק הישראלי מצא תחליף יעיל לכוח העבודה הפלשתינאי ע"י ייבוא שירותי עבודה ממזרח אירופה ומתאילנד. בהיעדר יציבות ביחסים המדיניים/פוליטיים עם הרשות, נראה כי עדיף להמשיך להעסיק את העובדים הזרים שאינם פלשתינאים. אולם, בטווח הבינוני נראה כי העסקת עובדים פלשתינאים תהיה עדיפה -הן בזכות ההיקף והזמינות של כוח העבודה והיעדר עלויות שיכון, והן בשל ההשלכות החברתיות הבעייתיות שנובעות מהעסקת העובדים הזרים האחרים אשר הופכים לתושבי המדינה. בטווח הארוך, ייבוא שירותי עבודה בהיקף נרחב מהמשק הפלשתינאי, יביא לשחיקת היתרון היחסי בעלות הנמוכה של כוח העבודה על ידי זחילת השכר כלפי הרמה המקובלת בישראל . על כן, נראה שיהיה עדיף לשכור את שירותי העבודה הפלשתינאים בתוך המשק הפלשתינאי, קרי העתקת הפעילות לשטחם. רצוי בהקשר זה להגדיר אזורים תעשייתיים לפיתוח שת"פ מוגדר בתנאי בקרה מחמירים באזורי הספר שבין המשקים, אשר יקטינו את האפשרות לסנקציות חד צדדיות.

4.3 התחום המוניטרי

כיום, משמשים זה לצד זה, השקל הישראלי והדינר הירדני, במשקל דומה, כמטבעות חוקיים בשטחים . איחוד מוניטרי עם המשק הפלשתינאי יותיר את השקל כאמצעי התשלום הרשמי היחיד בשטחי הרשות. **המשמעות של איחוד מוניטרי עם הרשות** הוא הקניית שליטה ובקרה על כמות הכסף, שערי הריבית, התפתחות המחירים, שערי החליפין במשק הפלשתינאי. איחוד מוניטרי יכרוך בהכרח בין התפתחויות המחירים בשני המשקים. מצב זה דומה לשער חליפין קבוע בין המשקים, אשר אינו נותן ביטוי למגמות הריאליות במשקים אלו מחייב תיאום מלא בשינויים בכמות הכסף בשני המשקים.



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לקראת הסכם קבוע בעוד שהמשק הישראלי שואף להתכנס ליציבות מחירים בסביבת אינפלציה אירופאית, צפוי המשק הפלשתינאי לרשום שיעור אינפלציה גבוהים יחסית המאפיינים תקופות של התפתחות מבנית וצמיחה מואצת במימון גירעוני, במשקים בלתי מפותחים.

חסרונות האיחוד המוניטרי מתבטאים בעיקר במעורבות שוטפת בניהול המדיניות המוניטרית של המשק הפלשתינאי כולל ערכת הבנקאות ושווקי ההון, שמשמעותה - אחריות מדינית כבדת משקל, ניקור לחיכוכים בינ"ל, ונטל אדמיניסטרטיבי בלתי מבוטל. **איחוד מוניטרי יחייב** גם תיאום מלא עם הרשות ביחס למדיניות הפיסקלית שלה, ובפרט לגבי התכנון והניהול התקציבי שלה. סוגייה זו נראית כיום בעייתית לביצוע נוכח הנורמות הציבוריות המסתמנות ברשות, המבנה האדמיניסטרטיבי הבלתי מפותח, הקשיים הפיננסיים בהם היא נתונה, ושאיפתה לריבונות. בשל הפערים העמוקים וההבדלים הבסיסיים בין המשקים ותוואי ההתפתחות הצפוי שלהם, איחוד מוניטרי מסתמן כהסדר לא יציב, ומסובך ליישום, ובפרט מותיר לרשות מרחב תמרון מוגבל ביותר בניהול מדיניות כלכלית.

היתרונות הגלומים בהסדר מסוג זה לישראל הם שוליים: 1) רווחים הנובעים מהיכולת להדפסת כסף (סניוראז'). פוטנציאל הרווח אינו גדול בהתחשב בכך שהמדיניות הכלכלית במשק הישראלי נמנעת מניצול האפשרות להפקת סניוראז' על פי חוק ובהתאם ליעדים ארוכי הטווח של השגת יציבות מחירים, ובשל המשמעויות המדיניות של מימושו. ניהול מדיניות הסניוראז' עבור הרשות, תוך התבססות על מרווח בידוד אפשרי בהשפעתו על שני המשקים, צפוי ליצור מתחים פוליטיים ממושכים וקשים. 2) ביטול עלויות המרת בעסקאות בין ישראלים לפלשתינאים. עלויות אלו שוליות על פי ממצאי מחקרים אמפיריים שנערכו על המשק האירופאי.

למדינת ישראל עדיף לצאת מתחום האחריות המוניטרי כלפי הרשות, שיש בה סיכון ועלות גבוהים שאין לצדם תועלת ממשית למשק הישראלי. ביטול חוקיותו של המטבע הישראלי תאפשר קביעת שע"ח נייד בין המשקים אשר ייתן ביטוי לכוח הקנייה של המטבעות השונים המשמשים אותם, וכמבודד השפעות אינפלציוניות הדדיות.

בהנחה כי יש לישראל עניין ביציבות המשק השכן, ניתן לפעול להקמת מועצת מקצועית בינלאומית אשר תשמש לייעוץ ובקרה על ניהול המדיניות הכלכלית ומדיניות המוניטרית

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לקראת הסכם קבע בפרט. תהיה זו מגבלה סבירה בהתחשב בתלות של הרשות בהשקעות ותמיכות הון זרות, ממדינות מפותחות מקרן המטבע וכיו״ב.

5. <u>השפעות אפשריות על המשק הפלשתינאי</u>

5.1 <u>המצב הקיים</u>

המשק הפלשתינאי קטן מאוד , צעיר ובלתי מפותח. הוא תלוי באופן כמעט מוחלט במשק הישראלי ששולט בנתיבי הסחר הבינ״ל שלו, מהווה שוק לכשליש מהיקף הייצוא שלו, סיפק לו תעסוקה שהזינה את צמיחתו המואצת עד פרוץ האינתיפאדה, ומספק לו שירותי תשתית בתחום החשמל והטלפון וכו׳. התלות של הרשות הפלשתינאית בהכנסות המכסים שנגבים עבורה על ידי ישראל מעמיקה את המימד הפוליטי/מדיני של התלות הכלכלית.
המשק הפלשתינאי מבוסס על חקלאות (כשליש בתל״ג), ייצוא שירותי עבודה (לישראל ולמדינות ערביות) שירותים ותעשיית מוצרים בסיסיים (בעלי ערך מוסף נמוך) שמתאימה יותר לסווג כמלאכה. כמוכן הוא סובל מרמת השקעה נמוכה מאוד (אשר מרכזת בבנייה למגורים) הנובעת בין השאר מהיעדר מערכת בנקאות מפותחת, ומשיעור אבטלה גבוה (כ-30 אחוזים) - מאז שנת 1993. יצוין כי קיים פער עמוק ברמת החיים (תוצר לנפש) בין אוכלוסיית הגדה לבין תושבי רצועת עזה (כ- 80 אחוזים לטובת הראשונה). הרשות הפלשתינאית מייחסת חשיבות עליונה להקמת מעבר יבשתי פטור מפיקוח (אקס טריטוריאלי) שיחבר בין שני חלקיה ויאפשר תנועה חופשית של אוכלוסייה ומסחר.

התייחסויות פומביות של כלכלנים פלשתינאים להסדר הקבע הכלכלי הרצוי, כללו בעבר האשמות כבדות כלפי ישראל כמי שניצלה את המשק הפלשתינאי משך שנות הכיבוש תוך בלימת התפתחותו בתחומים רבים. עצמאות כלכלית מלאה נתפשה כביטוי חשוב לריבונות לאומית מדינית. הסדרי פריז הוצגו על ידם כניסיון כוחני אחרון של ישראל להאריך את שליטתה במשק הפלשתינאי. עמדה זו אינה סותרת את ההכרה כי המשק הישראלי יכול לשמש משענת וזרז להתפתחות הכלכלה הפלשתינאית, בזכות הגודל רמת ההתפתחות והקרבה הגיאוגרפית.
לאחרונה פורסמו מספר מאמרים מגופים ממשלתיים למחצה (מכוני מחקר וכיו״ב) אשר תומכים באיחוד מכסים מלא. עמדתה הרשמית של הרשות - מסווגת לפי שעה. להערכתנו, העדפתם לאיחוד מכסים עשויה להתבסס על המתייבצה להימנע מלכונן של יתיהגבול המדיני

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באופן אפקטיבי. זאת, לאחר שהפלשתינאים נוכחו בעצמת הנזק שנגרם לכלכלתם מהפעלת מדיניות הסגר. ייתכן שהפלשתינים רואים כיום כיתרון כלכלי את הגבול המדיני הפרוץ, תוך מיסוד התלות בין המשקים בהנחה כי ישראל תקבל על עצמה יותר אחריות כלפי המשק הפלשתינאי. כמו כן, אפשר שההיסמכות על מערכת גביית המכס והשילוח הישראליים, נוחה להם, והמשמעויות הכספיות והאדמיניסטרטיביות הכוללות הנגזרות מעצמאות כלכלית מלאה מרתיעות אותם.

5.2 __היבטי יבוא__

5.2.1 יבוא סחורות - הסכמי פריז מתירים לפלשתינאים לייבא באופן עצמי בכפוף להסכמי GATT מוצרי מזון, דשנים, חומרי גלם בסיסיים לבנייה, אשר אין לפלשתינאים מקור רכישה עדיף על פני המשק הישראלי, וכן מותר להם על פי הסכם לייבא מוצרים חשמליים למשק הבית מארצות ערביות אשר חלקן בייצור אינו נופל מ- 30 אחוזים.

למעשה, האפקטיביות של ההתרה היא שולית פרט לייבוא כלי רכב ודלקים. חלק ממוצרי ההשקעה מותרים לייבוא במיסוי מופחת על ידי הפלשתינאים. אלא שכאמור, המערכת הפיננסית הפלשתינאית מנוונת והיקף ההשקעות בענפי המשק השונים נמוך מאוד, כך ששיעור המס המופחתים עדיין אינם מהווים זרז משמעותי לגידול בהיקפי יבוא נכסי השקעה.

ביחס להסדרי הקבע, הרשות מעוניינת בהפחתת התלות במשק הישראלי, על ידי הידוק קשרי הסחר עם מצרים וירדן בעיקר, תוך הקמת קווי מסחר בינ"ל עצמאיים - נמל ימי בעזה ונמל אוויר ברצועה ובגדה. כמו כן, הם רואים חשיבות ראשונה במעלה לחיבור יבשתי פטור מפיקוח (אקס טריטוריאלי) בין שטחי הגדה לרצועת עזה.

הפלשתינאים אינם רואים בהסרת איחוד מכסים פוטנציאל לשינוי ייבוא הסחר לפי ארצות המקור. לאור החשיפה הרחבה של המשק הישראלי לייבוא, לא צפויה ירידה ניכרת בביקוש הפלשתינאי לסחורות ישראליות בעקבות גיבוש מדיניות המיסוי שלהם, אלא בענפים בהם ימצאו צורך בהגנה לצורך פיתוח מקומי, בעיקר בתעשיות קלות המסורתיות. הפלשתינאים מקווים לייצר חיקויים מורשים למוצרי ייבוא. כיוון שאין למשק הפלשתינאי תעשייה מקומית הזקוקה להגנה מכסית, הפלשתינאים יעדיפו שיעורי מיסוי נמוכים יותר על מוצרים לצריכה פרטית בהתאם לגמישויות הביקוש המקומי השונות (משיקולי השאת תקבולים) משל המשק הישראלי, בעיקר בשל פערי ההכנסה. מאחר ומילאי ההון מצומצם ביותר, צפויה גם הקלה ברמות המכס על מוצרי השקעה. המשק הפלשתינאי זקוק ביותר להשקעות הון זרות ישירות, כמנוף להתבססותה.

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לקראת הסכם קבע

5.3 היבטי יצוא

5.3.1 יצוא סחורות - בהסכמי פריז ישראל התחייבה לספק למשק הפלשתיני שירותי ייצוא הזהים לשירותים הניתנים ליצואנים ישראליים. בפועל, על פי דו"ח הבנק העולמי, הסחורות הפלשתינאיות עוברות בדיקות ביטחוניות קפדניות המעכבות את השילוח בימים ארוכים. אולם עיקר הנזק לייצוא הפלשתינאי בשנים האחרונות נגרם כתוצאה ממאות ימי סגר שהוטלו על שטחי האוטונומיה, שכן 80 אחוזים מהייצוא הפלשתינאי מופנה לישראל.

הייצוא לישראל מתמקד כאמור בתוצרת חקלאית של יבולים בסיסיים, מסורתיים, שאינם דורשים טכנולוגיה מפותחת והסיכון הכלכלי בגידולם נמוך. כמו כן, מייצאים הפלשתינאים מוצרי הלבשה והנעלה, מוצרי מזון בסיסיים וכד'. מחסור חמור ומתמשך במקורות מים ונחיתות באיכות התוצרת מעמידים את התפתחותה העתידית של החקלאות הפלשתינאית בסימן שאלה. נראה כי פוטנציאל הפיתוח נמצא בתעשיות עתירות עבודה, שייתמכו על ידי השקעות הון זרות.

הייצוא לארצות אחרות מתרכז בסחר עם ירדן ועם מצרים. התוצר המיוצאת זהה לזו של ישראל. המשק הפלשתינאי מתקשה להתחרות עם התוצרת הירדנית והמצרית כיוון שעלות העבודה בו גבוהה יחסית (בהשפעת השכר ששולם לעובדים הפלשתינאים בישראל). הקשר בין המשק הפלשתינאי והמשק הירדני הדוק למדי בשל המשקל הגבוה של אנשי עסקים ממוצא פלשתינאי במגזר העסקי הירדני. בשל הקרבה הגיאוגרפית, יכולים נמליה הימיים והאווירים של ירדן, לשמש את המשק הפלשתיני כבסיס חלופי לישראל, למסחר בינ"ל.

5.3.2 ייצוא שירותי עבודה- מדובר בנכס הכלכלי העיקרי של המשק הפלשתינאי, אשר מספק עובדים למדינות הערביות יצואניות הנפט, וכן למשק הישראלי. מלחמת המפרץ וירידת מחירי הנפט בעולם, גרמו להקטנת הביקוש לעובדים במשקים אלו, ואילו האינתיפאדה הביאה לסגירת שוק העבודה הישראלי כלפי הפלשתינאים.

כאמור, התחליף המאקרו- כלכלי לייצוא החיוני של שירותי עבודה, הוא ייבוא הון. כל עוד לא יתפתחו ייבוא הון בהיקפים גדולים, עצירת ההידרדרות של הכלכלה הפלשתינאית, מותנית בפתיחת שווקי עבודה בפני מאות אלפי מובטלים. זהו אולי האינטרס הראשון במעלה של הצד הפלשתינאי בכל הסדר כלכלי, לטווח הבינוני.

5.4 התחום המוניטרי

הנהגת מטבע נושאת משמעות סמלית של ריבונות מדינית, שנתפשת כתועלת בלתי מבוטלת בעיני הרשות מהלך זה, מעבר להשלכות הכלכליות בנובעות מכך. **מההיבט הכלכלי**, משמעות הנהגת המטבע היא ניהול מדיניות מוניטרית בתחום כמות הכסף, המחירים הריביות ושע"ח.

היתרון העיקרי שטמון בהנהגת מטבע נובע מהיכולת לגבות את הסניוראז'. זהו מס האינפלציה, אשר בכוחה של הרשות המוסמכת להנפקת המטבע, לגבות מהציבור שמחזיק בו. המס מוטל על הגדלת בסיס הכסף (הדפסה) מעבר לרמה הנגזרת מקצב ההתפתחות הריאלי שלו. הדפסה כזו, המשמשת על פי רוב למימון הוצאות ציבוריות, יוצרת לחצים אינפלציוניים אשר שוחקים את ערך המטבע. שחיקת ערכו של המטבע המוחזק בידי הציבור לטובת המימון הציבורי משולה ל"מס מוניטרי".

עבודת מחקר שנעשתה בארץ העלתה הערכה כי בחמש השנים הראשונות להנהגת מטבע עצמי, יכולה הרשות לגבות תקבולי סניוראז' בשיעור 22.0 אחוזים מהתל"ג של המשק הפלשתינאי. **מאידך, הסיכון** הכרוך בשימוש יתר בכלי הסניוראז' המתאפשר לאחר הנהגת מטבע, נובע מהפיתוי הגדול שהוא ייצור לממשל אוטונומי צעיר בעל מקורות מימון מוגבלים, ואמצעי גבייה חלופיים בלתי מפותחים. שימוש יתר בסניוראז' כאמצעי מימון, צפוי לדחוף את המשק הפלשתינאי להאצה אינפלציונית. **אם תרצה הרשות להבטיח את עצמה** באופן שמרני מפני שימוש מזיק בסניוראז', היא יכולה להתחייב על שער חליפין קבוע של המטבע הפלשתינאי מול אחד המטבעות היציבים בעולם. משמעות ההתחייבות היא התניית גידול בכמות הכסף הפלשתינאי בגידול ביתרות המט"ח של המטבע אליו נצמדים, המשמש בתפקיד ההיסטורי של הזהב כבסיס כסף. אולם בכך תאבד את גמישותה בניצול יעיל של הסניוראז'. חלופה שמרנית פחות תקבע יחס גבוה מאחד לאחד בין הגידול בכמות הכסף המקומי לעלייה ברזרבת המטבע הנבחר, אך תקפיד על עיגון כמות הכסף (וההתחייבויות של המשק) בנכסי מט"ח יציבים.

סכנה נוספת בהנהגת מטבע אורבת למשק הפלשתינאי הצעיר בתחום ניהול מדיניות שער החליפין . משק קטן ופתוח כמו המשק הפלשתינאי חשוף מאוד לזעזועים בשערי המט"ח ובקצבי האינפלציה במידה ויונהג שע"ח נייד. מאידך במידה ויונהג שע"ח קבוע תידרש הרשות ליתרות מט"ח גדולות יחסית למקורותיה על מנת להגן עליו.

איגוד לשכות המסחר
ארגון העסקים של ישראל

לקראת הסכם קבע **איחוד מטבע עם ישראל** יקנה לכלכלה הפלשתינאית יציבות מוניטרית פנימית ומוניטין משופר בעיני משקיעים ומלווים זרים, בשל חוסנו יציבותו וסחירותו הגבוהים יחסית. איחוד זה יפחית האחריות של המשל הפלשתינאי לפיתוח מערכות מוניטריות וניהולן, ויאפשר לו להישען על המערכות הפיננסיות שמפותחות יחסית של המשק הישראלי.

נראה כי בטווח הקצר כדאי למשק הפלשתינאי לנצל את האפשרות להנהגת מטבע, למרות הסיכונים הכרוכים בכך. בטווח הארוך במידה והמטבע החדש לא יתייצב, יוכל המשק הפלשתינאי לעגן עצמו לשע"ח כזה או אחר.

6. סיכום

ניתן ומומלץ להגיע להסדר הכולל הפרדה מכסית ומוניטרית והסכמי סחר חופשי בין המשקים, לרווחת שני המשקים ולשיפור הבסיס המבני לשת"פ ביניהם. המגבלה האפקטיבית על התרת עיצוב ויישום מדיניות סחר חוץ פלשתינאית היא ביטחונית (מעקב אחר ייבוא בטחוני).

איננו רואים אפשרות או כוונה לחרם כולל מצד הרשות על תוצרת ישראלית, כיוון שאין ברשותה תחליפים זמינים למכלול הסחורות והשירותים שהיא רוכשת מהמשק הישראלי בפרט בענפי התשתית, האנרגיה והתקשורת.

חסימה סלקטיבית של ייצוא סחורות ישראליות על יד מכסי מגן אינה בעלת השפעה ניכרת על הייצוא הישראלי.

מאפייני ההון הפיזי והאנושי של המשק הפלשתינאי אינם מציבים אותו בעמדת תחרות עם המשק הישראלי בטווח הנראה לעין, מבחינת איכות הסחורות, יעילות והיקפי הייצור, וכושר הצמיחה.

היתרון היחסי של המשק הפלשתינאי ביחס למשק הישראלי, טמון בעלות העבודה הנמוכה, ויתרון זה הוא בעל פוטנציאל תרומה משמעותי למשק הישראלי, הן בייבוא שירותי עבודה, והן בשכירתם, כחלק מהעתקת פעילות אל המשק השכן, והשקעה בו.

יכולת להפרדה מבוקרת בין שני המשקים בידי ישראל, תהווה מנוף לעידוד הצד הפלשתינאי לאכוף את הפיקוח על המעברים. שכן, למשק הפלשתינאי אינטרס מובהק לפתיחות כלכלית [illegible]

איגוד לשכות המסחר
ארגון העסקים של ישראל

לקראת הסכם קבע המשק הפלשתינאי זקוק לשת"פ עם משקים מפותחים אשר יעמידו לרשותו הון, ידע וטכנולוגיה. למעשה, התפתחותו תלויה בכך. מטרתו של ההסכם על הסדרי הסחר הכלכליים מנקודת ראות של המשק הישראלי , היא להבטיח תנאים, אשר יעמידו את המשק הישראלי כשותף מועדף לפיתוחו של המשק השכן כמשק אוטונומי. שותף מועדף - על בסיס כדאיות הדדית המתבססת על הקרבה הפיזית והזיקה "ההיסטורית" העמוקה, שהן בעלות השלכות כלכליות מכריעות בהיבט של עלויות הובלה, ונגישות לשת"פ.