

Palestinian Economic Development: Israeli Actions in Light of the 1994 Paris Protocol and International Economic Law

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In 1993, Israel and the Palestinian Liberation Organization signed the Oslo Accords,¹ starting a peace process that was meant to end with a Palestinian State. The Oslo Accords were only the start of numerous agreements, including the 1994 Gaza-Jericho Agreement, which became Annex IV to the Accords, commonly known as the Paris Protocol.² The Paris Protocol laid out the framework for what was to be the economic relationship between Israel and a Palestinian state. Its writers recognized the importance that stability and growth in the Palestinian economy had for any hope of a lasting peace.³ As such, they developed a strategy which hinged on four “pillars” for Palestinian economic development: [1] International aid; [2] close Israeli-Palestinian economic relations; [3] foreign and private investment; and [4] access to foreign markets for Palestinian exports.⁴

When the Paris Protocol was first signed, excitement was high. The expectation was that this would be a boom to the Palestinian economy. Billions of dollars were quickly pledged in foreign aid,⁵ with the hope that private investment would soon

1. The Oslo Accords were actually a series of agreements signed by Israel and the Arab Nations. *See, e.g.*, Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr-P.L.O., 32 I.L.M. 1525; Interim Agreement on the West Bank and the Gaza Strip, With Selected Annexes, Sept. 28, 1995, Isr-P.L.O., 36 I.L.M. 551, 567; *see also* Jill Allison Weiner, *Israel, Palestine, and the Oslo Accords*, 23 FORDHAM INT'L L.J. 230, 232 (1999).

2. Protocol on Economic Relations between the Government of Israel and the PLO, P.L.O.-Isr., Apr. 29, 1994, P.L.O.-Isr., 7 PAL. Y.B. INT'L L. 308 [hereinafter Paris Protocol].

3. David P. Fidler, *Foreign Private Investment in Palestine Revisited: An Analysis of the Revised Palestinian Investment Law*, 31 CASE W. RES. J. INT'L L. 293, 295 (1999) [hereinafter *Palestinian Investment Law*].

4. *Id.* at 297.

5. MEL LEVINE, *Palestinian Economic Progress Under the Oslo*

follow. Inside Palestine, the prospect of being able to export to a global market raised hopes that the Palestinian industrial sector would finally be able to grow.⁶ However, the reality was just the opposite. In the first two years after the signing, the Palestinian economy was crushed,⁷ and has limped along ever since. The reasons for the continued struggles faced by the Palestinian economy are numerous. Some are unintended consequences of the Protocol agreements, others are problems with the Palestinian Authority, but many emanate from Israeli actions.⁸

This paper is broken up into four parts. The first part looks at international law generally and which economic rights should be upheld. The second part analyzes the Paris Protocol in particular, laying out what was agreed upon and what was meant to happen. The third part examines Israeli actions since the signing, looking both at breaches of the Protocol (both by its terms and by the spirit of the agreements) and actions in accordance with it that have still hurt Palestinian development. This part breaks down how Israeli actions have violated both the Protocol and international law. Finally, the fourth part quickly looks at alternatives to the current system.

I. ECONOMIC RIGHTS IN INTERNATIONAL LAW

The economic rights of individuals is a rapidly evolving area of international law. There remains much confusion as to what “economic” rights are protected by international law. The seminal piece of international law regarding economic rights is the International Covenant on Economic, Social and Cultural

Agreements 395, 400, in *Palestine and International Law: Essays on Politics and Economics* (Sandford R. Silverburg ed. 2002).

6. *Id.*

7. See Oren Gross, *Mending Walls: The Economic Aspects of Israeli-Palestinian Peace*, 15 AM. U. INT'L L. REV. 1539, 1560 (2000) (pointing out that between 1994 and 1996, it is estimated that the Palestinian standard of living decreased by 25% and “imports falling from [46%] to [38%] of the GDP” between 1992 and 1995).

8. U.N. Conference on Trade and Dev. [UNCTAD], *Palestinian Economy in East Jerusalem Left in “Development Limbo” Under Israeli Occupation, says UNCTAD Report* (May 8, 2013), available at <http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=491> (“It has been estimated that the Israeli separation barrier has imposed over \$1 billion in direct losses to the economy of East Jerusalem since its construction began in 2003.”).

Rights,⁹ adopted by the UN in 1966, but are several other major treaties that reference people's economic rights, including the 2009 Lisbon Treaty and the EU Charter of Fundamental Rights.¹⁰ Finally, there is case law in the United States which attempts to define economic deprivation for individuals internationally.¹¹

The ICESCR, which Israel signed and ratified, generally recognizes the right of people to an "adequate" standard of living, one that is supposed to be constantly improving.¹² It lays out this major goal in several specific articles. Articles 6 through 8 discuss the labor rights people possess.¹³ These articles start by recognizing the existence of a "right to work." Upholding a "right to work" means granting everyone the ability to choose the primary job by which they make their living. The "right to work" also imposes a duty to guarantee equal access to employment opportunities and to prevent discrimination.¹⁴ The Covenant requires signatories to work towards "full employment", which the OECD explains "take[s] into account both the rate of unemployment and the rate of employment."¹⁵ Article 7 says that the work guaranteed in Article 6 must be "decent" work.¹⁶

The right to work is defined as both a personal and a

9. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

10. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306)1; Charter of Fundamental Rights of the European Union, Dec. 12, 2007, 2007 (C 303) 1.

11. See, e.g., Bao Hui Chen v. Attorney Gen. of U.S., 438 Fed. Appx. 125 (3rd Cir. 2011); Salman v. Gonzales, 238 Fed. Appx. 306 (9th Cir. 2007); Jiang v. Holder, 398 Fed. Appx. 638 (2nd Cir. 2010).

12. ICESCR, *supra* note 12, at art. 11.

13. *Id.* at art. 6 – 8.

14. See *id.* at art. 7(c) ("Fair wages and equal remuneration for work of equal value without distinction of any kind").

15. OECD, POLICIES TOWARDS FULL EMPLOYMENT 24 (2000).

16. Committee on Economic, Social, and Cultural Rights, General Comment 18, Article 6, *The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*, sec. II(7), (Thirty-fifth session, 2006), U.N. Doc. E/C.12/GC/18 (2006) [hereinafter Comment 18] ("Work as specified in article 6 of the Covenant must be *decent work*. This is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.") (emphasis in original).

collective right, but it does not guarantee everyone a job.¹⁷ “[S]everal universal and regional human rights instruments have recognized the right to work . . . and affirmed the principle that” this “right to work” imposes specific legal obligations on states.¹⁸ States must ensure equal access to work and to equal pay for all persons in addition to having an obligation to push for full employment, including establishing training/educational programs as well as directly employing people.¹⁹

Article 11 goes on to establish the “right of everyone to an adequate standard of living.”²⁰ An “adequate” standard of living is defined as a right to adequate clothing, housing, food, and a right to “continu[al] improvement in living conditions.”²¹ The Committee on Economic, Social, and Cultural Rights (the “CESCR”) defined adequate housing as having “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost”²². The CESCR said adequate housing includes guaranteed legal “tenure,” which translates into protection from potential eviction.²³ Adequate housing also requires that the housing be accessible, and located in such a way as to allow people access to employment, healthcare and adequate infrastructure.²⁴ Adequate housing is not just providing a place for people to stay, “[r]ather it should be seen as the right to live somewhere in security, peace and dignity.”²⁵

“Adequate food” means more than a “minimum” level of calories per person—it means “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.”²⁶ Most importantly, the CESCR has

17. *See generally id.*

18. *Id.* at I(3).

19. *Id.* at I(2).

20. ICESCR, *supra* note 12, at art. 11(1).

21. *Id.*

22. Committee on Economic, Social and Cultural Rights, General Comment 4, *The Right to Adequate Housing*, art. 7, (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991) [hereinafter Comment 4].

23. *Id.* at art. 8(a).

24. *Id.* at art. 8(f).

25. *Id.* at art. 7.

26. Committee on Economic, Social and Cultural Rights, General Comment 12, *Right to Adequate Food*, art. 8, (Twentieth session, 1999), U.N.

held that the right to adequate food is connected to two things: the right to water and access to land.²⁷ People must have reasonable access to food-producing land because they have the right to feed *themselves*.²⁸ Finally, states have an “obligation to respect existing access to adequate food,” requiring states to “not . . . take any measures that result in preventing such access.”²⁹

The Covenant has many other articles, which collectively lay the framework for people’s basic economic and social rights. While the ICESCR does a fairly comprehensive job of creating an outline for people’s economic rights, the Covenant “does not refer to the the economic freedoms of profession, trade and private property.”³⁰ Although the ICESCR does not mention these things, they are mentioned in several other international treaties including “the 2009 Lisbon Treaty and in its EU Charter of Fundamental Rights.”³¹ Finally, as seen by several immigration and asylum decisions, the US judicial system is starting to recognize economic rights as being fundamental, albeit in a haphazard way.³²

While the recognition of individual economic rights is a relatively new thing, a framework does exist. Though the contours of these rights have yet to be solidly defined, core principles have been established. Individuals have the right to an adequate quality of life, to be able to pursue work in a field they choose, and to be able to improve that quality of life for themselves and their families.

Doc. E/C.12/1999/5 (1999) [hereinafter CESCR 12].

27. See World Health Organization, Food Security, <http://www.who.int/trade/glossary/story028/en/>.

28. CESCR 12, *supra* note 29, at art. 12.

29. *Id.* at art. 15.

30. Ernst-Ulrich Petersmann, *International Economic Law in the 21st Century: Need for Stronger “Democratic Ownership” and Cosmopolitan Reforms*, 31 POLISH Y.B. INT’L L. 9, 18 (2011)

31. *Id.*

32. Fatma E. Marouf & Deborah Anker, *Socioeconomic Rights and Refugee Status: Deepening the Dialogue Between Human Rights and Refugee Law, International Refugee Law, and Socio-Economic Rights: Refuge from Deprivation*, 103 AM. J. INT’L L. 784, 793 (2009) (“However, the BIA had also stated in *In re Acosta* that persecution ‘could consist of economic deprivation or restrictions so severe that they constitute a threat to an individual’s life or freedom.’”); *Senior State Department Official Describes Shift in U.S. Policy Regarding Economic, Social, and Cultural Rights*, 105 AM. J. INT’L L. 590, 590 (2011). (“Human dignity has a political component and an economic component--and these are inexorably linked . . .”).

II. THE PARIS PROTOCOL AGREEMENTS

The Paris Protocol agreements touched on multiple areas, with the most important ones being “customs, taxes, labor . . . [and] industry.”³³ The Protocol was meant to establish a sort of hybrid free trade agreement/customs union/common market, “promot[ing] private sector development.”³⁴

The customs union was to be mostly based on the State of Israel's duties and rates with a few exceptions.³⁵ This allowed Palestinians to set their own tariff rates so long as they were not lower than Israeli rates.³⁶ The two exceptions allowed for “specified goods produced” in Arab countries, up to a certain quota, and for “specified goods described as” aid related items without a quota, such as food, to be imported at Palestinian determined tariff rates.³⁷ The purpose of keeping tariff rates equal was meant to prevent importers from using the lower rates of Israel or Palestine to bring in cheaper goods destined for the other.³⁸ Import taxes are collected when they first enter Israel, and a mechanism was established where Israel would credit the Palestinian Authority for all revenue collected on goods destined for Palestine.³⁹ The agreement gave the Palestinian Authority the power to negotiate trade agreements with states and international organizations in an effort to open markets for Palestinian exports.⁴⁰

The customs union also provides for a sort of monetary union.⁴¹ The New Israel Shekel became the “circulating

33. See Gaza Gateway, *Will we always have Paris?*, 2 (September 13, 20012), <http://gisha.org/en-blog/2012/09/13/will-we-always-have-paris/>.

34. *Palestinian Investment Law*, *supra* note 3, at 295.

35. David P. Fidler, *Peace Through Trade? Developments in Palestinian Trade Law During the Peace Process*, 38 VA. J. INT'L L. 155, 162 (1998).

36. *Id.*

37. *Id.*

38. See Keith C. Molkner, *Legal and Structural Hurdles to Achieving Political Stability and Economic Development in the Palestinian Territories*, 19 FORDHAM INT'L L.J. 1419, 1448-49 (1996) (explaining the procedure for collecting import tax on good that arrive via one territory but are destined for the other).

39. *Id.*

40. See Christian Hauswaldt, *Problems Under the Ec-Israel Association Agreement: The Export of Goods Produced in the West Bank and the Gaza Strip Under the Ec-Israel Association Agreement*, 14 EUR. J. INT'L L. 591, 597-98 (2003) (outlining the “Agreement between the EC and the Palestinian National Authority”).

41. See *id.* at 598 (describing the economic aspect of the agreement).

currency” in Palestine,⁴² and though the Jordanian Dinar and USD were still utilized, banks were only to accept the shekel or dinar.⁴³ Despite the creation of a Palestinian Monetary Authority,⁴⁴ the Bank of Israel controls Palestinian monetary policy through the shekel.⁴⁵

The agreement sets out a tax structure, discussing direct taxes and value-added taxes (“VAT”).⁴⁶ It allows for Israel and Palestine to each have the power to collect taxes in areas they control.⁴⁷ The Palestinians also have the power to set direct taxes in areas they control, such as income and property, independently of Israel,⁴⁸ but the rates must not be more than one to two percent lower than the Israeli rates with a minimum floor of fifteen percent.⁴⁹ Finally, each state is to receive the revenue from VAT paid by their citizens in the opposite states. For example, VAT collected on Palestinian purchases in Israel is to be remitted and vice versa.⁵⁰

While the agreement, as part of the customs union, in creating the free trade common market area, provides for the

42. Amir H. Khoury, *An American Bank in the Palestinian Authority: Investing in the Peace*, 24 BROOK. J. INT’L L. 739, 744 (1999).

43. *Id.* at 750-51 (explaining that withdrawals from banks in the area may only be received in Dinar or the shekel).

44. *See id.* at 747 (outlining the creation of the Palestinian Monetary Authority as authorized in the Economic Protocol).

45. *See* Simone Daud, Mondoweiss, Money for nothing and occupation for free: The 1994 Paris Protocols on economic relations between Israel and the PLO, (September 28, 2011), <http://mondoweiss.net/2011/09/money-for-nothing-and-occupation-for-free-the-1994-paris-protocols-on-economic-relations-between-israel-and-the-plo.html> (“In the agreement the Palestinians cannot issue currency and, in fact, have no say whatsoever in monetary policy.”).

46. KEITH C. MOLKNER, Legal and Structural Hurdles to Achieving Political Stability and Economic Development in the Palestinian Territories 367, 384 in *Palestine and International Law: Essays on Politics and Economics* (Sandord R. Silverburg ed. 2002).

47. *See id.* at 385 (“Over 200 Palestinian tax officers were hired.”).

48. *Id.* at 384.

49. *Id.* at 387.

50. *Id.* (explaining the system for the distribution of such revenues as follows: It is the responsibility of the VAT departments of each side is to distribute special invoices to businesses transacting with the other side. These business must then issue these invoices whenever they sell goods or services to the other side, so that the taxes can be separated out from the general VAT collections. For example, an Israeli company that sells to Palestinian customers must be given special invoices provided by the Israeli VAT department, and must use these invoices to record each transaction with a Palestinian. The company must then return these invoices to the Israeli VAT department along with the taxes due. The Israeli VAT department must then clear these revenues to the PA within 6 days.)

free movement of goods between Israel and Palestine,⁵¹ it does not provide for the free movement of labor.⁵² It merely provides that “[b]oth sides will attempt to maintain the normality of movement of labor between them, subject to each side’s right to determine from time to time the extent and conditions of the labor movement into its area.”⁵³

The agreement also touches on several other aspects, such as tourism, agriculture and insurance. However, the biggest effects have come from the preceding measures.⁵⁴

III. ISRAELI ACTIONS SINCE 1994; STALLING ECONOMIC PROGRESS

The Israeli economy dwarfs that of all of its neighbors, especially Palestine.⁵⁵ Both before and after the 1994 agreements, the Palestinian economy was completely dependent upon Israel.⁵⁶ While Palestinians are less dependent upon Israel as a source of work, Israel dominates Palestinian trade which, due to the undeveloped nature of the economy, makes up eighty-five percent of Palestine’s GDP.⁵⁷ Israel accounts for seventy-one percent of Palestinian imports, and is the destination for ninety-seven percent of Palestinian exports, amounting to seventy-four percent of Palestine’s total trade value.⁵⁸ Comparatively, Palestine’s second biggest trade partner, Jordan, only accounted for just over two percent of Palestinian trade.⁵⁹ Even those goods destined for outside

51. Paris Protocol, *supra* note 2, art. IX.

52. *Id.* at art. VII.

53. *Id.* at art. VII.

54. See generally MOLKNER, *supra* note 46.

55. See Gross, *supra* note 7, at 1551-52 (stating that Israel’s GDP in 1998 was \$100.5 billion, making it greater than the combination of Egypt, \$82.7 billion, Jordan, \$7.4 billion, and the Occupied Territories, \$3.6 billion).

56. *Id.* at 1556 (explaining that 1992 wages paid to Palestinians working in Israel made up 25% of Palestinian GDP, by 1996 Palestinians working in Israel contribution to GDP dropped to 6%).

57. WorldBank, An Analysis of the Economic Restrictions Confronting the West Bank and Gaza, <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/EconomicRestrictionsSept.08.pdf> [hereinafter Economic Restrictions].

58. Israeli Movement Restrictions and Impediments, Palestinian Federation of Industries (September 2006), http://www.kas.de/wf/doc/kas_9916-1522-1-30.pdf?070117115314 [hereinafter Movement Restrictions].

59. *Id.* (Europe as a whole only accounted for 15% of Palestinian Imports).

markets mostly move through Israeli seaports and airports.⁶⁰ This dependence is entirely one-sided. In 1992, one-third of Palestinian workers were employed in Israel. By 1996, Israeli employers were able to replace them with enough workers from East Africa and elsewhere that this number decreased to seven percent.⁶¹ Further, trade with Palestinians is a “negligible” part of Israel’s annual trade balance.⁶²

Given the nature of the economic situation, Israel could “decouple” from the Palestinian economy without much pain.⁶³ This section will look at harmful Israeli actions, starting with impediments to travel (both for labor and goods). It will then move to tax issues and issues related to the monetary union, issues with land use, and finally barriers to foreign investment and dealing.

A. IMPEDIMENTS TO TRAVEL:

As mentioned, the Protocol was meant to establish a common market, where goods would freely flow; while the flow of labor was not guaranteed, it was encouraged in the spirit of the arrangement. However, pointing to its need for security, Israel prevented a “common market” from existing through a system of permits and border closures.⁶⁴ Starting in 1993, Israel repeatedly sealed its border with the Occupied Territories to all traffic,⁶⁵ in blatant violation of the Protocol agreement’s guarantee of a free flow of goods. Past the border, there currently exist 520 checkpoints or other fixed

However, it is estimated that up to 54% of “imports” from Israel are in fact “re-imports” from overseas with Palestinians using Israeli intermediaries.).

60. *Id.* (80% of non-Israeli Palestinian imports come through Israel ports).

61. *See* Gross, *supra* note 7, at 1552-61.

62. *Id.* at 1552 (Trade with Palestine made up less than 1% of Israeli imports, and while Palestinian consumption of Israeli goods and services is more prominent, it is still a relatively minor market.).

63. Molkner, *supra* note 43, at 1422 n.6 (referencing a policy called Hafrada, or Separation, established in response to several terrorist attacks); Gross, *supra* note 7, at 1571 (The size and development differences between the Israeli and Palestinian economies “minimize the implications for the Israeli economy of economic separation.”).

64. *See* Movement Restrictions, *supra* note 58.

65. Arie Arnon, *The Implication of Economic Borders Between Israel and Palestine*, 9 PALESTINE-ISR. J. OF POLITICS, ECON. & CULTURE 1, 3 (2002), available at <http://www.pij.org/details.php?id=122>. Each day of closure costs the Palestinian economy millions, total cost of border closures is in the billions. *Id.*

impediments in the West Bank.⁶⁶ These, along with the construction of the “Separation Wall”, have effectively cut what remains of the West Bank into three zones.⁶⁷ The World Bank estimates that these internal barriers alone caused a fifteen percent decline in real Palestinian GDP between 2000 and 2002,⁶⁸ while the Separation Wall costs the economy a further twenty-three percent of GDP per year.⁶⁹

Beyond the border closures and physical barriers, Israel has instituted an extensive “permit” system that controls the flow of people and goods, both between Palestine and Israel, and within areas of Palestine itself.⁷⁰ The permit regulations control all travel to and from Israel and the West Bank/Gaza, and within the West Bank between Israeli-controlled areas and Palestinian-controlled areas⁷¹ for both people and goods. This is combined with extensive security checks and delays at border crossings. A World Bank study found that, although crossings were operating well below capacity, the average time to process a Palestinian shipment through a border crossing was an hour and forty-five minutes, even without any lines.⁷² Shipments of Palestinian goods had to pass a full scanner inspection, with a further sixty percent being manually inspected at random.⁷³ Once goods clear the border, they are further delayed in clearing customs. In 2007, the average time for a shipment from the West Bank to clear customs at Ashdod was ten days, with delays of up to thirty, while the average time for Israeli shipments was only one to two days.⁷⁴

66. IKV Pax Christi, *Analysing Israel's Economic Policy Towards Palestine and the Practical Implications of Netanyahu's Economic Peace 1*, 20 n.68 (2012), available at <http://www.paxvoorvrede.nl/media/files/analysing-israels-economic-policy-towards-palestine-2012.pdf>.

67. Movement Restrictions, *supra* note 58 (identifying the North, Central and South zones).

68. *Id.*

69. *Id.*

70. Eyai Hareuveni, *Arrested Development: The Long Term Impact of Israel's Separation Barrier in the West Bank* (Oct. 2012), https://www.btselem.org/download/201210_arrested_development_eng.pdf.

71. *Id.*

72. Economic Restrictions, *supra* note 57.

73. *Id.* (No “known trade” or sophisticated risk management system has been put in place. Currently, no coordination with Palestinian Authorities takes place, even though the General Administration for Crossings and Borders (GACB), a Palestinian borders agency, exists.)

74. *Id.* (For Gazan firms the average was thirty days with delays lasting up to sixty days.)

If a common market truly existed, the differences in size between the Israeli and Palestinian economy should provide the perfect incentives for labor-intensive Palestinian industry and agriculture.⁷⁵ However, through all of these measures, Israel has effectively curtailed the development of a common market. These barriers to movement have caused shipping costs to increase by sixty-seven times on some routes.⁷⁶ The restrictions and delays on the shipments of goods vastly increase the costs of doing business in Palestine, especially when attempting to do cross-border business. The delays and border closings make it impossible for businesspeople to effectively plan a schedule, or to honor commitments. Further, the internal barriers, and the complete lack of a transportation link between the West Bank and Gaza, have barred the Palestinian economy from achieving any economies of scale.⁷⁷ This makes it nearly impossible for Palestinian businesses to expand, as they effectively cannot reach foreign markets. Exemplifying this is the fact that a full ninety-five percent of Palestinian businesses have less than ten employees.⁷⁸ For Palestinian business to expand, the country needs to be able to sell to more than just its local communities. However, let the de facto separation of the West Bank into three zones hinders this.⁷⁹

The damage to economic growth from the hampering of trade has increased unemployment, but so has the limiting of labor. The permitting regime and security checkpoints hurt the ability of Palestinians to work in Israel. Immediately after the signing of the 1994 agreements, only 30,000 Palestinians were granted work visas, down from 80,000 the year before.⁸⁰ To make up for this loss of cheap labor, Israel has drastically increased work permits given to individuals from other countries. Work permits for foreigners jumped from 4,000 to

75. See Gross, *supra* note 7, at 1581.

76. See Movement Restrictions, *supra* note 58.

77. Economic Restrictions, *supra* note 57.

78. *Id.*; Cf. *Statistics About Business Size (including Small Business) from the U.S. Census Bureau*, U.S. CENSUS BUREAU, available at <https://www.census.gov/econ/smallbus.html> (approximately 78% of American employer business have less than 10 employees).

79. Economic Restrictions, *supra* note 57 (reporting that in 2000, 60% of West Bank businesses sold outside of their hometown, but by 2006 less than 40% did).

80. LEVINE, *supra* note 5 (noting that tens of thousands of workers who informally were allowed entrance as day laborers are now barred).

107,000 between 1992 and 1996 alone, giving Israel an alternative to their need for Palestinian labor.⁸¹

Israelis can make the argument that, if Palestine and Israel are two different states, then they are not violating the CESCRC by closing the border and impeding Palestinian's ability to work in Israel. The CESCRC says nothing about letting "foreigners" work within your state. In fact, had such a provision existed, it is unlikely that most countries would have signed on to the Covenant. However, regardless of whether Palestine and Israel are considered one state or two, the numerous barriers and checkpoints that crisscross the West Bank are a prima facie violation of the Covenant. One of the core obligations imposed upon states by the right to work is that states must "ensure the right of access to employment, especially for disadvantaged and marginalized individuals and groups".⁸² Further, states must "avoid any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups,"⁸³ something Israeli policies, such as those favoring military veterans for employment, clearly do.

B. TAX ISSUES:

Israeli harms the Palestinian economy through tax policies in two ways. First, its control over the VAT and tariff rates has had adverse effects. Second, Israel has frequently used its control over large parts of the collection of these taxes as a weapon.

Given the disparity in development between Israel and Palestine, both the tariff and VAT rates set for the Israeli economy are much higher than what would be optimal for the Palestinian economy.⁸⁴ These higher rates directly increase the cost of living for Palestinians, whose average income is not at a level that normally would support a tax rate as high as the

81. See Movement Restrictions, *supra* note 58. The number of foreign workers went from 10,000 in 2004 to 200,000 in 2006 when those without proper work visas are factored in. These workers allowed labor-intensive Israeli industries, agriculture and construction, to continue without using Palestinian labor. Gross, *supra* note 7, at 1560.

82. Comment 18, *supra* note 19 (emphasis added).

83. *Id.*

84. MOLKNER, *supra* note 46 at 386.

fifteen percent VAT minimum.⁸⁵ They also skew the economy, as the higher tariff rates make it harder to import goods from countries other than Israel, deepening Palestinian dependence.

The PLO accepted high VAT and tariff rates in exchange for free access to the Israeli economy.⁸⁶ While the high tax rates set by the Israelis are not a breach of the Protocol, they do increase the cost of doing business with the outside world. This cost was supposed to be offset by the increase in trade with Israel, but the restrictions on movement listed above have, in reality, burdened Palestinians with “the price of a customs union without enjoying its benefits”.⁸⁷

Israel has clearly violated the Protocol’s tax arrangements by manipulating the clearance procedure for tax collections. Tariff revenues make up a significant portion of the Palestinian Authority’s budget,⁸⁸ but the Palestinian Authority is dependent upon Israel clearing those revenues in accordance with the Protocol.⁸⁹ Repeatedly, Israel has withheld revenue, holding the Palestinian Authority hostage to Israel’s demands.⁹⁰ This is an oft used weapon, and is in violation of the Protocol that requires revenues to be cleared within six days.

This is worsened by the underreporting of taxes due to the Palestinian Authority. Given the restrictions placed on Palestinian businesses’ ability to move goods, many Palestinian businesses buy goods from overseas that Israeli intermediary companies import, as to avoid the extensive Israeli customs and security checks.⁹¹ While this makes it easier for Palestinian businesses to import from abroad, it causes the Palestinian Authority to lose a large amount of revenue.⁹² With VAT clearance, many Israeli companies selling to Palestinians are never provided the invoices required to show that the taxes paid are due to the Palestinian Authority.⁹³ While these

85. *Id.* at 387.

86. *Id.* at 387.

87. *Id.* at 387.

88. IKV Pax Christi, *supra* note 66.

89. Paris Protocol, *supra* note 2, at art. III, ¶ 15.

90. Analyzing Israel’s Economic Policy Towards Palestine and the Practical Implications of Netanyahu’s Economic Peace, Young Professional Research Initiative (2012) <http://www.paxvoorvrede.nl/media/files/analysing-israels-economic-policy-towards-palestine-2012.pdf>.

91. *See id.* at 20.

92. *Id.* at 23 (estimating 58% of Palestinian imports from Israel come from another country).

93. MOLKNER, *supra* note 46, at 387.

collection problems are widely recognized, the Palestinian Authority does not have the resources to monitor the movement of goods⁹⁴ and Israel has no incentive to fix the issue.

Finally, the lack of control of the tariff rates inhibits Palestine's ability to independently sign trade agreements. Since Palestine relies on Israeli tariff rates, they can provide few incentives to countries in potential trade deals. This makes them almost dependent upon the goodwill of foreign countries in negotiating free trade agreements.

C. MONETARY UNION AND FISCAL POLICY:

The Protocol provides for the establishment of a Palestinian Monetary Authority (PMA) to regulate Palestine's financial sector.⁹⁵ Realistically, this organization is toothless because it is limited to regulating financial institutions. With the Shekel as the primary currency, the Bank of Israel asserts full control over fiscal policy in Palestine. While the PMA unilaterally authorizes new bank branches in Palestinian territory,⁹⁶ any banks making transactions in the Shekel must have a "correspondent" Israeli bank and must send daily reports to the Central Bank of Israel, amongst a host of other responsibilities.⁹⁷ Banks in Palestine are "to deal exclusively" in the Shekel or Dinar,⁹⁸ making use of other foreign currencies challenging. Consequently, these restrictions demonstrate how the Bank of Israel is the de facto controller of the financial sector in Palestine.

Given the constraint of labor flows to Israel, the lack of control over fiscal policy further hamstrings Palestine's ability to encourage economic development. As evidenced by the European Union, a fiscal union between a stronger and weaker economy requires a free flow of labor for the weaker economy to benefit. Without the ability to set interest rates or issue currency, Palestine is unable to increase the money supply or

94. *Id.* at 388.

95. *E.g.*, Khoury, *supra* note 42, at 746.

96. *Accord id.* at 750-51. However, any banks who have head offices headquartered with the PMA "may not open a branch in Israel" or in West Bank areas that are outside of the PA's control. *Id.* at 750. This prohibition limits the development of a native Palestinian financial sector. *Id.*

97. *See id.* at 749-50 (involving foreign currencies and many import and export services).

98. *Id.* at 750.

encourage exports by decreasing the value of their currency. The Palestinian economy needs the remittances of hard currency that workers could provide otherwise, every time the Bank of Israel raises interest rates, the Palestinian economy will suffer.

D. LAND USE CONTROLS:

The Protocol specifically avoided border issues, never distinguishing between what made up “Palestine” and what made up “Israel.” Instead, the Protocol applies to all areas under full control of the Palestinian Authority and the Gaza Strip. At the time of the signing, this was only Jericho but has since expanded as the Israeli military withdrew from much of the West Bank.⁹⁹ In the 1995 Oslo Accords, the West Bank split up into three distinct zones: Area A covers urban centers, Area B covers rural centers, and Area C is the remaining space in between. The Palestinian Authority is authorized full control over the smallest area, zone A,¹⁰⁰ and the rest of the land is controlled by Israel and the Israeli military.

While the Protocol does not specifically establish mechanisms for the use of land, the purpose behind the agreement was to create economic growth in the Occupied Territories; however, Israeli land policy has created the opposite effect.

Area C makes up the biggest portion of the West Bank, and completely envelops every Area A or B enclave.¹⁰¹ As of 2008, thirty-eight percent of Area C was entirely off limits to Palestinians,¹⁰² and Palestinians had to receive permits to use the rest of the land.¹⁰³ Building permits are rejected by Israeli authorities for numerous reasons, including a lack of land registration, which is the case for seventy percent of the West Bank.¹⁰⁴ In fact, ninety-four percent of construction permits

99. *E.g.*, *The Paris Protocol - Historical Classification*, KONRAD-ADENAUER-STIFTUNG – PALESTINIAN TERRITORIES, Oct. 14, 2014, <http://www.kas.de/palaestinensische-gebiete/en/pages/11895/>.

100. *See* Economic Restrictions, *supra* note 57, at 9.

101. *Accord id.* at 9–10 (accounting for 59% of land, but only 10% of Palestinian population).

102. *See id.* (explaining that 23% of land is restricted because of military use, 10.2% is enveloped by the Separation Wall, 5.1% is occupied by settlements).

103. *Id.*

104. *See id.* at 11. Private ownership or title of land indicates that land is

were denied between 2000 and 2007 due to a lack of land registration.¹⁰⁵ As a result, the Palestinian population is restricted in small enclaves that cannot grow and develop.¹⁰⁶

Additionally, the division has created artificial land shortages in Palestinian cities and towns that are barred from naturally sprawling out, driving up housing prices.¹⁰⁷ Because all Palestinian population centers are surrounded by Area C land, any transportation infrastructure projects must be approved by the Israeli military,¹⁰⁸ limiting the development of infrastructure and industry in the Palestinian area. The same situation occurs with industrial parks envisioned by the Protocol negotiations. By their nature, industrial parks require large amounts of land, which is only available in Area C, and of course permitting approval has been slow.¹⁰⁹

While the right to land is not explicitly guaranteed by the Covenant, Israeli land policies violate the Covenant on Economic, Social and Cultural Rights in several ways. First, it is a violation of the Palestinian people's right to adequate water, an aspect of the right to adequate food.¹¹⁰ Israel has arbitrarily taken control over a majority of the water supplies in the West Bank, leaving disproportionately small amounts for Palestinian use.

More noticeably, Israeli land policy directly affects the right to adequate housing, since access to land is a condition necessary to provide adequate housing.¹¹¹ The Committee on

registered, but the Israeli military had stopped registration in 1967. All non-registered land is considered "State Land". *Id.*

105. *Cf. id.* (showing how 97% of building applications had been allowed in 1972).

106. *Id.* at 12.

107. *Id.* at 12 n.96 ("The past few years have witnessed an explosion of land prices, particularly in areas of high population density In Ramallah, for instance, the municipality reports that prices of commercial land in the city have doubled each year for the past three years, reaching \$4000/sq m Even more striking is the clear differential between prices of otherwise similar land in Area A vs Area C, where the premium for land classified as A or B vs C can range from 0% to over 150% or more, depending on the location and the perceived relative «safety» of the property of Area C from confiscation or demolition.").

108. *See id.* at 12.

109. *Id.* Four industrial parks have been planned in Palestine, but the biggest obstacle to moving forward is the availability of land. *Id.* n.95.

110. *See* Comment 4, *supra* note 25, at annex III para. 8.

111. *Accord* Elisabeth Wickeri, "Land Is Life, Land Is Power": *Landlessness, Exclusion, and Deprivation in Nepal*, 34 *FORDHAM INT'L L.J.* 930, 1015 (2011).

Economic, Social and Cultural Rights has expressly stated that forced evictions are a prima facie violation of article 11 of the CESCR,¹¹² whereby many Palestinians have experienced such evictions. Further, Israeli control of the majority of land in the West Bank represses Palestinian communities' ability to expand, which creates an artificial shortage of land for individuals to live on, directly affecting housing affordability in an artificial manner, another tenant of adequate housing.¹¹³

Israel's dominance over land, exacerbated by Israeli-controlled land surrounding and isolating each Palestinian community, combined with barriers to travel, puts into question the accessibility of housing available to Palestinians. The CESCR requires adequate housing to be accessible, with basic infrastructure, and to be located in such a manner that it is accessible to work.¹¹⁴ Israeli policies have created an environment that directly damages the accessibility of Palestinian housing¹¹⁵—again, in violation of the CESCR. To be clear, adequate housing is not just “having a roof over one's head.”¹¹⁶

IV. ALTERNATIVES TO THE PARIS PROTOCOL

Any alternatives to the current system must take into account the hard realities occurring on the ground. Theoretically, a customs union and common market between Palestine and Israel should have been mutually beneficial, but in actuality, given Israeli actions and issues with the Palestinian Authority (corruption, weak economic legal structure, and poor administrative ability),¹¹⁷ it has been disastrous to the Palestinian economy.

112. See generally CESCR, General Comment No. 7: The right to adequate housing (Art. 11.1): Forced evictions, U.N. Doc. E/1998/22, annex IV (May 20, 1997) (explaining the harms of forced evictions).

113. *West Bank and Gaza Area C and the Future of the Palestinian Economy*, Report No. AUS2922, UNISPAL (Oct. 2, 2013), <http://webcache.googleusercontent.com/search?q=cache:aEAYzkXqJ54J:unispal.un.org/UNISPAL.NSF/0/E5B9C3E9592A5E7285257BFE004A5369+&cd=8&hl=en&ct=clnk&gl=us&client=safari>. Over the past two decades, housing prices have increased 24% more than expected because of the restrictions on Palestinian usage of Area C land. *Id.*

114. Comment 4, *supra* note 25, at para. 7.

115. IKV Pax Christi, *supra* note 66, at 23.

116. Comment 4, *supra* note 25, at para. 7.

117. See generally MOLKNER, *supra* note 46.

A “traditional” economic agreement would not work. For example, there have been proposals of developing a traditional free trade agreement, but Israel has flatly rejected the idea, originally for fear of implicitly recognizing Palestinian borders.¹¹⁸ In fact, a traditional customs union would not work much differently than the current framework. Therefore, the situation calls for a unique solution which should include aspects of various economic arrangements. Below are several proposals that, together, should improve the situation, while reducing the Palestinian Authority’s dependence on Israel.

A. INDEPENDENT CURRENCY

First, the Palestinian Authority should be granted complete fiscal independence and should be permitted to establish its own currency. This would give the Palestinian Authority the ability to influence the economy through fiscal means, and the abilities to change interest rates and increase or decrease the money supply are extremely powerful economic tools (consider the massive fiscal stimulus conducted by the American Federal Reserve, the recent “quantitative easing,” and the changing of interest rates). Additionally, the Palestinian Authority would be able to raise money in an emergency through printing and encourage exports or investment by weakening the currency or decreasing interest rates.

Due to the current trade deficit and inability to print its own money, Palestine must “sell” whatever foreign exchange reserves it has to Israel to convert into NIS in order to finance their imports.¹¹⁹ The Palestinian Authority’s incapacity to raise foreign currency, mainly due to low investment levels, furthers this problem. Effectively, any foreign currency that enters Palestine, whether aid or investment, is likely to end up in Israel.

Having control of fiscal policy would liberate the Palestinian banking sector from Israel. Moreover, the Palestinian Authority would allow banks to accept transactions in foreign currencies, especially dollars and euros, a major incentive to outside investors.

118. See Gross, *supra* note 7, at 1598 – 99.

119. *Id.*

B. POWER OVER TARIFF RATES

The Palestinian Authority needs the power to set independent tariff rates. Currently, Palestinian customs duties and tariff rates are pegged at Israeli levels. This takes away the the Palestinian Authority's ability to effectively craft a targeted trade policy. The Palestinian Authority cannot pick and choose which industries to protect with higher tariffs, nor can it effectively negotiate trade agreements with foreign countries. With rates and duties set at the Israeli level, the Palestinian Authority has no incentives to offer other countries during free trade agreements and negotiations. Instead, the Palestinian Authority must depend on Israeli free trade agreements. Unfortunately, Israel conducts little business with Arab countries in which Palestine would likely experience good trading relationships.¹²⁰

There are two problems with retaining the power over tariff rates. First, there is an issue with policing the end destination of goods coming through Israel, and second, collecting the revenue will be difficult. Allegedly, the original reason for the customs union resulted from Israeli concerns about importers using lower Palestinian tariff rates to enter Israel for free by way of the common market. However, while it would arguably be difficult to prevent such leakage, regulation could succeed if both sides agreed to do so.

A provision would have to exist whereby anyone who imported *end* goods to Palestine but then re-exported them to Israel would pay the difference in tariff rates to Israel. An emphasis on "end" goods is only so as not to hamper the ability of Palestinian industries to one day develop. Palestinian manufacturers would likely be importing the raw materials for what they produce, thus technically, any manufactured goods they produced and exported to Israel would be a "re-export". This type of "re-export" was not part of Israel's original concern about companies skirting higher Israeli taxes by using Palestinian intermediaries.

The collection of revenues would be more challenging to regulate. Most trade flows through Israeli waters and airports, which is unlikely to change. Therefore, some mechanism would have to be in place where Palestinian officials or more likely third party officials (given the unlikeliness of Israeli

120. *E.g.*, Gross, *supra* note 7, at 1557.

cooperation with Palestinian officials) are present at Israeli ports of entry to collect dues on goods destined for Palestine. Any other method would include the risk of Israel unilaterally withholding revenues, something consistently done in the past.

C. ALTERNATE TRADE ROUTES

While the concept of free movement of labor and goods between Israel and Palestine works well in theory, it is impractical. Israeli security fears and measures are not going to change in the near future, so the checkpoints, security checks and permits that impede Palestinian trade will continue. While the best alternative is to create Palestinian controlled ports of entry (a seaport in Gaza, and an airport in the West Bank), these are unrealistic alternatives. Thus, the Palestinian Authority needs to reorient more trade through Jordan.

While this is not a perfect alternative, it will save Palestinian shippers money.¹²¹ Cooperation with Jordanian border authorities, which is currently lacking, would have to increase.¹²² Also, border crossings, specifically the Allenby Bridge, would also have to increase their capacity and become equipped with the infrastructure necessary to support more trade.¹²³ The continuous presence of Israeli barriers to movement and infrastructure within the West Bank make implementing this measure unlikely, especially since it would depend on Israeli goodwill.

D. INDEPENDENT TAX POLICY

While the Palestinian Authority has the ability to set direct taxes in areas it controls, it needs the freedom to shape its tax policy holistically. Specifically, the Palestinian Authority needs to be able to set the VAT to a more reasonable level in order to prevent dehydration of the Palestinian economy.

While the ability to set the VAT rates would be helpful, the Palestinian Authority needs to simplify the tax code. The current direct tax code is a maze of regulations, with weak

121. See *Economic Restrictions*, *supra* note 57, at 6.

122. *Id.* at 7.

123. *Id.* at 6 – 7 (explaining the importance of the Allenby Bridge).

implementation, and has become a drag on the economy. This is something the Palestinian Authority can change now, independent of a new agreement with Israel.

V. CONCLUSION

Right now, Palestinian economic rights are severely curtailed. When the Covenant on Economic, Social and Cultural Rights was passed, it was meant to ensure the right of everyone to an “adequate standard of living,”¹²⁴ a constantly improving right. Instead, Palestinian standards of living have been suffering since the signing of the Paris Protocol and current Israeli policies continue to violate internationally recognized economic rights.

While there are several changes that could be made to improve the situation, until the Israeli military domination of the West Bank and Gaza Strip ends, the Palestinian economy will always be, to some extent, dependent on its larger neighbor. The Palestinian Authority’s new independent power of tariff rates, collection of revenues, and freedom to negotiate trade agreements with other nations became irrelevant the moment Israel closed the borders.¹²⁵ Further, no level of fiscal freedom will change the fact that Israel’s control of land use in much of the West Bank creates a de facto ceiling on development alongside the artificial land shortage.

As painful as the current situation is, certain measures will have to remain. The “common market” never actually developed, however, the “free” movement of goods between Israel and Palestine has benefitted Palestinians. So while cross border movement faces an unending list of non-tariff barriers, the alternative would be worse. Removing the “common market” would not remove the barriers; it would just force Palestinian businesses to pay a tariff on top of the delays they already experience.

Before the signing of the Protocol in 1994, the Palestinian economy grew at faster rates than Israel’s.¹²⁶ The potential for Palestinian economic success has been demonstrated by the extremely successful diaspora (currently the most educated of

124. Comment 4, *supra* note 22, at para. 1.

125. See Movement Restrictions, *supra* note 58, at 8.

126. E.g., Mel Levine, *Palestinian Economic Progress Under the Oslo Agreements*, 19 *FORDHAM INT’L L.J.* 1393, 1397 (1996).

all Arab diasporas).¹²⁷ But so long as Palestinians, and the goods they produce, are unable to travel freely, the economy will remain an Israeli hostage and Palestinians' economic rights will continue to be trampled upon.

127. *Id.* at 1398 (“[t]heir diaspora population of 3 to 3.5 million has been among the most commercially successful everywhere it has gone . . .”).