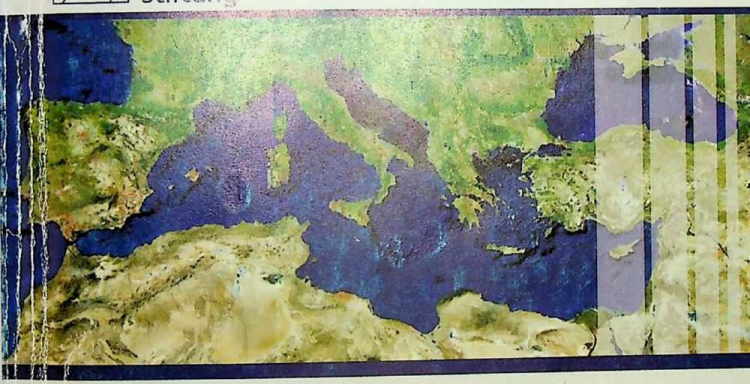
Konrad
Adenauer
Stiftung



On the Road to Economic Integration with the European Union:

Palestine's Legal Requirements

Dr. Samer Fares
Faculty of Law and Public Administration
Birzeit University

This publication has come as a result of two research projects conducted in 2004-2005 and a workshop held in Amman in November 2004 sponsored by the Konrad-Adenauer-Stiftung/ Regional Office in Amman, Jordan on the European-Mediterranean dialogue.

By: Dr. Samer Fares
Chairperson, Department of Law
Faculty of Law and Public Administration
Birzeit University
Email: sfares@birzeit.edu

On the Road to Economic Integration with the European Union: Palestine's Legal Requirements

By: Dr. Samer Fares
Faculty of Law and Public Administration
Birzeit University

Table of Contents

Abbreviations

CMA	Capital Market Authority
EC Treaty	Treaty Establishing the European Community
EC	European Community
ECJ	European Court of Justice
EEC Treaty	Treaty Establishing the European Economic Community
EMP	Euro-Mediterranean Partnership
ENP	European Neighborhood Policy
EU	European Union
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GATT	General Agreement in Tariff and Trade
GS	Gaza Strip
ICA	Israeli Civil Administration
IMA	Israeli Military Administration
IMF	International Monetary Fund
IMG	Israeli Military Government
JAA	Jordan Association Agreement
JD	Jordanian Dinar
LAA	Lebanon Association Agreement
LPD	Listing Particulars Directive
MFN	Most-Favoured-Nation
NIS	New Israeli Sheqel
PA	Palestinian Authority
PADICO	Palestine Development and Investment Company
PALTEL	Palestinian Telecommunication Company
PCD	Palestinian Custom Department
PLC	Palestinian Legislative Council
PLO	Palestine Liberation Organization
PMA	Palestinian Monetary Authority
PSE	Palestine Securities Exchange
PSI	Palestinian Standard Institute
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
VAT	Value Added Tax
WB	West Bank
WBGS	West Bank and Gaza Strip
WTO	World Trade Organization

I. INTRODUCTION

The Barcelona Declaration[1] adopted at the Barcelona Conference expresses the intention to achieve a Euro-Mediterranean Partnership (EMP). This consists of, among other things, the creation of an area of shared prosperity through the progressive establishment of a free trade area between the European Union (EU) and its Partners and among the Mediterranean Partners themselves, accompanied by substantial EU financial support for economic transition in the Partners and for the social and economic consequences of this reform process. This free trade area is supposed to link EU member states and their Mediterranean Partners through the progressive elimination of all restrictions on trade in goods and services, including the right of establishment and capital by 2010.[2]

The EU has so far signed eight association agreements - with Tunisia and Israel in 1995, Morocco in 1996, Palestine Liberation Organization (PLO) and Jordan in 1997, Egypt in 1999, Algeria in 2001 and Lebanon in 2002.[3] The EU has also concluded negotiations with Syria and negotiations with Libya should start soon. The association agreements with the Mediterranean countries do not go as far as envisaged in the original EMP declaration. Most of the association agreements call for the establishment of a free trade area in goods and current payments but not in services, establishments and capital. To achieve the progressive establishment of the free trade area, partner countries must adopt a list of suitable measures regarding rules of origin, certification, protection of intellectual and industrial property rights, and competition. It also requires the adjustment and modernization of economic and social structures, giving priority to the promotion and development of the private sector, to upgrading the productive sector and to the establishment of an appropriate institutional and regulatory framework for a market economy. Partner countries must also endeavor to mitigate the negative social consequences which may result from this adjustment by promoting programs for the benefit of the neediest populations.

The EU recently took another important step towards further integrating the Mediterranean countries into the activities of the European Union with a new policy towards the Central, Eastern and Mediterranean countries called the European Neighborhood Policy (ENP).[4] This Policy does not bypass the

[1] The Barcelona Declaration adopted at the Euro-Mediterranean Conference 27-28 November 1995.
[2] This policy was confirmed in the common strategy of the European Council (19 June 2000) on the Mediterranean region (2000/458/CFSP) Official Journal L. 183, July 22, 2000.
[3] The association agreements with Mediterranean countries do not include Turkey, Cyprus and Malta. Turkey is an EU candidate while Cyprus and Malta joined the EU in May 2004.
[4] COM (2003) 104 final.

EMP but rather builds on it. The ENP's objective is to share the benefits of the EU's 2004 enlargement with neighboring countries in strengthening stability, security and well-being for all concerned. It is designed to prevent the emergence of new divisions between the enlarged EU and its neighbors and to offer them the chance to participate in various EU activities through greater political, security, economic and cultural co-operation.

The ENP believes that progress towards full respect for human rights, political reform and good governance would be best achieved through trade liberalization and economic reform.[5] The core principle of this new policy is to gradually allow neighboring countries to participate in the EU's internal market. This participation entails the full liberalization of what the Euro-Med Association Agreements have excluded, the free movement of services, establishments and capital. The process requires even more legislative and regulatory approximation pursued on the basis of commonly agreed priorities, focusing on the most relevant elements of trade and economic integration and the current level of harmonization with EU legislation.

As part of the EMP and ENP, the Palestinian Authority (PA) is expected to perform a list of economic and legal reforms to create a free trade area with the EU and, more importantly, to join the EU's internal market. The purposes of this study are to understand the legal obligations and requirements of the EMP and ENP, analyze the Palestinian legal system in light of these obligations and accordingly, determine the legal changes that the PA is required to adopt in order to benefit from EU economic development policy in the region. Thus, this study is divided into five sections.

After this introduction, Section two explains the nature of the Palestinian legal system and the jurisdiction of the PA in order to understand the extent of its obligations as stipulated in the agreements signed with Israel. Section three discusses the road to a free trade area with the EU as stipulated in the EMP. It (i) analyzes the nature and obligations of the EU-PLO Association Agreement, (ii) and assesses the compatibility of the Palestinian legal system with the legal requirements of the EMP's association agreements. Section four discusses the EU internal market and the Palestinian legal framework of capital movements and financial services. This section only explores the meaning of the EU internal market on capital and services, which are the two components excluded from the EMP, and the Palestinian legal framework covering them. Part (i) defines the scope and meaning of capital and services, (ii) looks at EU liberalization of capital and services and (iii) discusses the liberalization of capital and services in Palestine. Finally, Section five concludes.

[5] (Presidency Conclusions of 28/05/04).

Following the occupation of the West Bank and Gaza Strip (WBGS) by Israel in 1967, the Israeli Military Administration (IMA) succeeded in integrating the Palestinian economy with that of Israel in order to serve Israeli political, military and economic interests. In close cooperation with the Bank of Israel and the Ministries of Finance and Trade, the military government of the Israeli Ministry of Defense restricted Palestinian imports and exports to and from third countries, imposed the Israeli currency on the Palestinian people, shut down Palestinian financial institutions and introduced a license system on all local and foreign investment in the WBGS. This deliberate and discriminatory policy made the Palestinian economy completely dependent on Israeli markets.[6]

In 1994/95, Israel and the PLO signed many agreements transferring executive, legislative and judicial authority and powers over most civil responsibilities in the WBGS to the PA. The Paris Protocol defined PA legal jurisdiction over economic and financial affairs. In order to separate and free the Palestinian economy from direct Israeli control, the PA repealed restrictions imposed by the Israeli authorities on the Palestinian economy and established its own institutions to administer financial and economic matters. These institutions are intended to strengthen the free market economy adopted by the Palestinian Basic Law in order to create a sound and stable economy and trade system. In this context and in order to understand the legal framework of the economy and trade in Palestine today, this section first explains the nature of the Palestinian legal system and then explains the jurisdiction of the most important development in modern Palestinian history, the inauguration of the PA.

1- The nature of the Palestinian legal system

Until the recent agreements in 1993-1995 between Israel and the PLO to create the PA, Palestine was administered by outside authorities (the Ottoman Empire, British Mandate, Jordan and Egypt, and Israel).[7] Therefore, the Palestinian legal system is derived from this complex history. The laws imposed during each historical period have remained in force through other periods unless subsequently amended or replaced by later legislation. The extent to which applicable laws were changed by the new administering authorities varied to reflect the interests of each authority. For example, the Egyptian authorities introduced little changes to the pre-existing Ottoman and British laws during its administration of the Gaza Strip (GS), whereas the Jordanians, who annexed the West Bank (WB) to the Jordanian Kingdom, changed almost the entire legal structure.

[6] DIWAN I. and SHABAN R. (eds.), Development under Adversity: The Palestinian Economy in Transition (Washington DC: The World Bank, 1999).

[7] For the purpose of this study Palestine means West Bank, Gaza Strip and Jerusalem.

These different interests left the WBGS with a dual legal system. Law in the WB is based on the Jordanian continental Latin legal system, while the law in the GS is inherited from the British Mandatory common Anglo-Saxon legal system. However, certain laws dating back as far as the British Mandate and Ottoman Empire also remain in force in the WB. Furthermore, after the occupation of the WBGS by Israel in 1967, the Israelis injected hundreds of military orders affecting all aspects of Palestinian life, such as the judicial structures and legal provisions, especially those relating to governance, security, trade, travel, access to land and political life. Consequently, at present, each region operates under a combination of laws from various historical periods.

The Ottoman period (1517-1917): During the Ottoman period, Palestine was not administered as a single unit but was divided into different administrative regions, or Sanjaks. However, laws passed by the Ottoman Parliament in Constantinople applied to all parts of the Empire, including Palestine. These laws were derived from the Muslim holy book, the Koran, and the practices of Prophet Muhammad. However, in the beginning of the 19th century there were significant legal developments that still have a bearing on the legal system in force today in Palestine. The Ottoman Empire was influenced by legal trends in Europe, in France in particular. Ottoman jurists were impressed by the French system of legal codification and its influence led to the codification of various Ottoman laws.[8] An important example of this trend is the Land Code of 1857, the Civil Code of the 1870s[9], the Criminal Code of 1857, the Code of Civil and Criminal Procedure of 1861 and Commercial and Maritime Law Codes.[10]

The British Mandate (1917-1948): Four centuries of Ottoman rule came to an end in 1917 after the First World War when Britain assumed control of Palestine and Transjordan (Jordan today). From 1918 until 1922, Britain controlled Palestine through military occupation and from 1922 through 1948, Britain administered Palestine according to a Mandate authorized by the League of Nations.[11] Legislative and administrative powers were vested in the British High Commissioner, except as limited by the explicit terms of the Mandate. The Order-in-Council, enacted on August 10th, 1922, was the most important legislative act of the Mandate period and served as the Palestinian Constitution during the whole Mandate period. Article 46 of the Order-in-Council provided that laws in force prior to the British occupation would remain in force provided that they did not violate the terms of the Mandate.[12]

[8] ROBERT E., Islamic Law in Palestine and Israel: A History of Survival of Tanzimat and Shari'a in the British Mandate and Jewish State (Leiden: Brill, 1978).
[9] The full Arabic name is "Majallet El Ahkam El Adlieh", commonly referred to as the "Majalle".
[10] DANIEL G., The Ottoman Empire and Early Modern Europe (Cambridge: Cambridge University Press, 2002).
[11] Article 2 of the Mandate for Palestine and the preamble to the Order-in-Council.
[12] WASSERSTEIN B., The British in Palestine: The Mandatory Government and the Arab-Jewish Conflict (London: Royal Historical Society, 1978).

With a broad legislative authority, the High Commissioner passed many laws resembling British law in form and principal. English common law replaced most of the Ottoman laws. Legislators focused on drafting defense and security regulations, such as a criminal code, civil and criminal procedure laws and Palestinian nationality laws. Many laws were designed to set the stage for commercial development, such as company and partnership laws, trade laws, banking laws and intellectual property laws. The British Mandate did not focus on altering ordinary private law and as a result some Ottoman legislation, such as the Majalle and the land laws, remained in force through the Mandate period.

By the end of the Mandate, the British authorities had left more than 600 laws (ordinances) in force in Palestine[13], reflecting the extent of British changes to the legal system applicable at that time. In November 1947, the United Nations General Assembly partitioned Palestine, giving more than 55 percent of the land to the Jewish minority. The Arabs rejected this plan and in the bitter fighting that ensued 750,000 Palestinians were made homeless, Israel declared the new state of Israel on May 15, 1948, comprising 77 percent of Palestine, considerably more than originally proposed by the UN partition plan.[14] The British Mandate ended and British troops withdrew. The area over which Israel declared sovereignty excluded the WB, which came under Jordanian control, and the GS, which came under the control of Egypt.

Jordanian rule in the West Bank (1948-1967): On May 17th, 1948, Jordanian troops entered the WB and declared a state of emergency in the eastern part of Palestine. Proclamation number 2, promulgated on May 15, 1948, provided for the application in the WB of Palestine laws that were in force on the eve of the termination of the Mandate, provided that such laws did not contradict the Jordanian Defense Law of 1935. Jordanian military rule over the WB continued until November 2, 1949 when it was replaced by a Civil Administration via the Law Amending Public Administration in Palestine No. 17 of 1949, which vested in the King of Jordan all powers and responsibilities assumed by the High Commissioner. In April 1950, Jordan formally annexed the WB and a law was passed ordering that all laws in force in the WB and the East Bank were to remain in force until replaced with new unifying laws.

The years between 1950 and 1967 witnessed an active legislative period in which most of the Mandate laws existing in the WB were revoked and new laws issued that governed both banks of the Jordan River. The legal system moved away from the English common law system towards a civil

[13] This figure does not include the by-laws and other legal instructions enacted by the British authorities.
[14] United Nations, The Partition of Palestine 29 November 1947: An Analysis (Beirut: Institute for Palestine Studies, 1967).

law system closer to that prevailing in neighboring Arab countries. Today, the majority of laws in force in the WB come from that period. While the legal system became more continental, it retained clear evidence of Ottoman and English influence. The Ottoman Majalle and land codes remained in force as well as some of the Mandate laws, such as the Civil Wrongs Ordinance of 1944 dealing with torts. At the end of this period, the Jordanian authorities left more than 400 laws in force in the WB[15] reflecting the profound changes made by Jordan to the legal system.

Egyptian rule in Gaza (1948-1967): During the same period, Egypt did not annex the GS but instead preferred to administer it. The GS was kept as an autonomous unit and retained its own independent legislative, judicial and executive bodies. An Egyptian military Governor-General was appointed who in turn appointed a civilian administrative Governor-General (GG). The Egyptian GG enacted a proclamation stating that all laws in force during the Mandate would continue to apply in the GS.[16] Since the motive of the Egyptian authorities was to play an administrative role, minor changes were introduced to the GS legal system. On November 25, 1955, the Prime Minister of Egypt issued the Basic Law of the Gaza Strip establishing a Palestinian Legislative Council. On March 5, 1962, the Legislative Council enacted a new constitution which declared that all laws and court judgments were to be issued and executed in the name of the Palestinian people, confirming the Palestinian identity of the GS. In the 1960s, basic regulations were issued such as the Civil Defense Law No. 17 of 1962, the Drugs Law No. 19 of 1962, and the Labor Law No. 16 of 1964. Thus, the pre-existing mix of Ottoman and British laws remains largely in force in the GS today. By the end of this period in the GS, the Egyptian authorities had introduced only 13 new laws and had inflicted few changes to the composition of the legal system.

The Israeli Occupation (1967-present): After the 1967 War between Israel and its Arab neighbors, Israeli forces occupied the WBGS and installed a military administration to rule the Palestinian occupied territories, replaced in 1981 by a separate military regime called the Israeli Civil Administration (ICA).[17] The Israeli Military Commander, and later his delegate in the ICA, exercised all legislative, executive and judicial powers inside the WBGS. The Military Commander issued Proclamation No: 2 declaring all laws in force in the WBGS on June 7, 1967 valid provided that they did not contradict any other Israeli proclamations or military orders. A military judicial system was created that issued military orders to regulate matters broadly encompassing the sphere of "security", criminal matters and other aspects of Palestinian affairs. Other matters, such as land disputes, tax and customs assessments

[15] This figure does not include the by-laws and other legal instructions enacted by the Jordanian authorities.
[16] Palestine Official Gazette (Egyptian Administration), Issue no. 11, 15/09/1952, 429.
[17] Military Orders no. 947 in West Bank and 725 in Gaza Strip.

and appeals against pensions of civil servants, natural resources and fiscal concerns were transferred to the military objection committees that were part of the newly created system of justice.[18]

Legislation passed in the name of the Military Commander eventually began to facilitate the implementation of the Israeli Government's interests. Since 1967 to the present day, there have been over 1468 military orders enacted in the WB and over 1100 military orders enacted in the GS. Each of the WB and GS were subject to two different military, and afterwards civil, administrations reflecting for the most part the pre-existing differences in the legal systems of these two areas.[19] Military orders issued during this period still have the force of law and new military orders are being enacted by Israel with respect to areas still under Israeli occupation in the WB.[20]

The Palestinian Authority (1994-present): No significant changes occurred until September 13, 1993, when Israel and the PLO signed the historic Declaration of Principles on Interim Self-Government Arrangements. This agreement stipulates that Israel and an established Palestinian Interim Self-Government Authority[21] will work together to find a peaceful solution to the Israeli-Palestinian conflict in five years based on United Nations Security Council Resolutions 242 and 338.[22] According to this Declaration, the Israeli Military Authority (IMA) and its Civil Administration would transfer all civil authority over the Palestinian population to the PA. In particular, Israel would transfer education, culture, health, social welfare, direct taxation, and tourism to the PA,[23] who has the right to legislate for these sectors to promote economic development in the WBGS.[24]

Following on from the Declaration of Principles, Israel and the PA signed the 1994 Agreement on the Gaza Strip and Jericho Area, and the 1995 Interim Agreement on the West Bank and Gaza Strip (the Interim Agreement).[25] These Agreements transferred authority over 40 civil areas from Israeli control to the PA. These areas include agriculture, archeology, banking, trade and industry,

[18] DABOUR N., 'Prospects for and Problems of the Palestinian Economy in the West Bank and Gaza Strip', Journal of Economic Cooperation among Islamic Countries, Vol. 19, No. 2, 1999, p. 1.

[19] RAJA S., From Occupation to Interim Accord: Israel and the Palestinian Territories (The Hague: Kluwer Law International, 1997).

[20] Article XI of the Interim Agreement between Israel and the PA divided WBGS into three areas; Area A, which includes densely populated Palestinian areas (cities). This Area is under full Palestinian control. Secondly; Area B, which includes Palestinian territories with less populated areas (small towns and villages). This Area is subject to shared responsibility; the PA controls civil matters and Israel controls security. Thirdly: Area C, which includes unpopulated areas, settlements and military camps. This Area is under full Israeli control.

[21] The PA consists of an elected President and Legislative Council plus an Executive Authority appointed by the President, Articles III and V of the Interim Agreement.

[22] Article 1 of the Declaration of Principles.

[23] Article VI of the Declaration of Principle.

[24] Article IX of the Declaration of Principle.

[25] The text of all the Israeli-Palestinian Agreements can be found at the PA official Website. http://www.pna.net/search/showindex.asp?DocCategory=1

taxation, education, electricity, environment, fishing, employment, forests, health, energy, insurance, land registration, legal affairs, telecommunications, tourism, transportation, and finance.[26] Accordingly, the PA has assumed legislative, executive and judicial powers over most civil sectors for Palestinians in the WBGS.[27] Most recently, another important development has materialized in the GS. Israel has withdrawn from all of the GS assuming the PA full control over the people but not the international economy. PA has no right to draw its own custom or import policy.

In conclusion, the Palestinian legal system in force in the WBGS is a direct reflection of the history of that region. The main characteristic of the WB legal system is its basis in Jordanian, continental Latin law mixed with laws dating back as far as the British Mandate and Ottoman Empire. The main characteristic of the GS legal system is that it is inherited from the common Anglo-Saxon law of the British Mandate combined with many Ottoman laws, which were not repealed by the British Mandate. Following the Israeli occupation of both the WB and GS in 1967, Israel passed hundreds of military orders amending most of the laws in both areas. Finally, the PA arrived in 1994 to work at the unification of the two legal systems. The PA enacted legislation applicable to both the WB and GS and at the same time repealed the different laws in force in both regions. Accordingly, the legal system in force today in Palestine is a combination of laws from the Ottoman period, the British Mandate, Jordanian rule in the WB and the Egyptian administration of the GS, the Israeli occupation and finally, the Palestinian Authority.

2. The legal jurisdiction of the Palestinian Authority

2.1. Territorial jurisdiction

The Interim Agreement provides that the PA's legislative, executive and judicial powers and responsibilities include all the WBGS as a single territorial unit, except for matters reserved for the final negotiations[28] and powers and responsibilities not transferred to the PA.[29] The Interim Agreement divided PA control into territorial, functional and personal jurisdictions. The territorial jurisdiction of the PA encompasses areas A and B in the WB and all the GS after the dismantling of the Israeli settlements in October 2005. The functional jurisdiction means that the PA's mandate includes all powers and responsibilities transferred by the Interim Agreement or that will be transferred in any future agreement in the entire WBGS. The personal jurisdiction means the PA's mandate applies to all persons in the WBGS except Israelis.

[26] For a complete list of all authorities transferred see, Annex III, Protocol Concerning Civil Affairs of the Interim Agreement.
[27] Article III of the Interim Agreement.
[28] The final matters are Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis.
[29] Article XVII(1) of the Interim Agreement.

It is important to note that the territorial and functional jurisdiction of the PA encompasses not only areas A and B, but also includes Area C that is under full Israeli control, regarding civil powers and responsibilities not related to the territories. This expansion of the PA mandate is derived from the fact that Israel links the jurisdiction of the PA in Area C to persons, which does not include the most sensitive issues of land, territorial waters and subsoil. In contrast, that means that the PA has complete territorial jurisdiction over areas A and B e.g. the exclusive right to exploit gas off the shore of the GS. Yet, how can the PA enforce its authority in Area C which is under full Israeli control? Israel allowed the PA to appoint civilian inspectors to monitor compliance with laws and regulations within the powers and responsibilities transferred to it in Area C. However, these inspectors are not allowed to conduct any activity that involves the arrest or detention of persons, seizure of property or any other activity involving the use of force. Moreover, they are neither allowed to wear uniforms of a police or military nature, nor carry arms.[30] Consequently, the IMA[31] has retained the following:
(i) all powers and responsibilities for land, territorial waters and subsoil in Area C, which represents 61 percent of the WBGS;
(ii) all powers and responsibilities not transferred to the PA such as foreign relations and security;
(iii) Israeli citizens.

To this end, Article XVII (4) of the Interim Agreement stipulates that the IMA shall retain the necessary legislative, judicial and executive powers and responsibilities, in accordance with international law. This paragraph confines Israeli legislative, judicial and executive powers to Area C and not areas A and B. For example, Military Order Amending the Law on Selling Immovable Properties (West Bank), No. 1464 of 1999[32], Military Order on Settlement Protection (West Bank), No. 1468 of 1999[33], and Order concerning Security Instructions (West Bank), No 1455 of 1997[34] are all related to the issues of settlements, land and security, which fall under the IMA's jurisdiction. It is interesting to note that we could not find any military orders enacted by the IMA in the GS after the entry into force of the Interim Agreement. This fact meant that there was no IMA functioning in the GS. In other words, it means that Israel has dismantled its military government in GS as a result of the Interim Agreement.[35]

---

[30] Article IV of Annex III, entitled Protocol Concerning Civil Affairs of the Interim Agreement.
[31] The ICA was repealed by Articles I(5) of the Interim Agreement and Article II of Annex III, Protocol Concerning Civil Affairs.
[32] Proclamation, Orders and Appointments, Issue no. 187, 1999, p. 2590.
[33] Proclamation, Orders and Appointments, Issue no. 187, 1999, p. 2600.
[34] Proclamation, Orders and Appointments, Issue no. 177, 1997, p. 2364.
[35] Some lawyers have informed me that the IMA does exist in Gaza but stopped publishing its orders in the official journal (Proclamation, Orders and Appointments) after the Interim Agreement

Yet, the IMA has interpreted Article XVII (4) differently and is still enacting military orders relating to areas already transferred to the PA. For example, Military Order on Administration of Local Councils (West Bank), No. 1453 of 1997[36], Military Order on Transportation (West Bank) No 1467 of 1999[37], Military Regulation Amending the Jordanian Income Tax Law (West Bank) of 1999.[38] These military orders relate to local councils, transportation and income tax, which are under the jurisdiction of the PA. Israel has no legal right to regulate in these civil matters.

The PA has the right to regulate all civilian matters transferred under the agreements in the whole of the WBGS. Legislation means any primary and secondary legislation including basic laws, laws, by-laws and other legislative acts. However, the right to adopt legislation is not exclusive. Any PA legislation that amends or abrogates existing laws or military orders must be consistent with the provisions of the Declaration of Principles, the Interim Agreement or any future agreements or it will be considered null and void.[39] The President of the PA should not promulgate legislation adopted by the PA if it contradicts the above. For this purpose, all legislation must be communicated to the Israelis on the Legal Committee and if they consider the legislation to be inconsistent with the agreements, it must be referred to Palestinian members of the Committee for discussion.

It can therefore be concluded that as a result of the agreements signed between the PLO and Israel, PA territorial jurisdiction in the WBGS consists of the following:

(i) The PA has legislative authority over all civilian authorities transferred to it by Israel.
(ii) Its jurisdiction is not confined to areas A and B but also includes Area C with regard to persons.
(iii) The PA's legislative jurisdiction must not contradict the agreements.
(iv) The legal system in force in WBGS, including Military Orders enacted by the Israeli Authorities before the Interim Agreement, remains valid.
(v) Although the IMA interpreted it otherwise, its territorial jurisdiction only covers Area C.
(vi) The IMA retains the right to regulate all WB matters not transferred to the PA such as security, settlements and foreign relations.

2.2. Economic jurisdiction

The right of the PA to legislate must be compatible with all Palestinian-Israeli

[36] Proclamation, Orders and Appointments, Issue no. 175, 1997, p. 2318.
[37] Proclamation, Orders and Appointments, Issue no. 187, 1999, p. 2598.
[38] Proclamation, Orders and Appointments, Issue no. 187, 1999, p. 2606.
[39] Article XVIII (4) of the Interim Agreement.

agreements. In other words, the PA is authorized to legislate within the rigid boundaries determined by the agreements. Therefore, it is crucially important to identify the PA's economic jurisdiction in order to define its economic legislative powers. Internationally speaking, Article IX (5) of the Interim Agreement gave the PLO the right to conduct negotiations and sign agreements with states or international organizations for the benefit of the PA only in the following fields:

(i) Economic agreements as specifically provided in Annex V of the Interim Agreement[40];

(ii) Agreements with donor countries for the purpose of implementing arrangements for the provision of assistance to the PA;

(iii) Agreements for the purpose of implementing the regional development plans detailed in Annex IV of the Declaration of Principles or in agreements entered into in the framework of the multilateral negotiations; and

(iv) Cultural, scientific and educational agreements. All agreements between the PA and representatives of foreign states and international organizations, as well as the establishment in the WBGS of representative offices, are permitted.

Accordingly, the Interim Agreement allowed the PA to conduct economic agreements with the international community provided that they do not contradict Annex V, entitled Economic Relations[41], i.e. PA economic jurisdiction is defined by the Paris Protocol. The main character of this Protocol is that it has introduced a quasi-customs union between Israel and Palestine.[42] It is quasi because Palestinian products have not had free access to Israeli markets, as should be the case under a full customs union. Israel has subjected Palestinian products to tariff and non-tariff barriers (quotas). The Paris Protocol defined the economic rights of the PA and its economic relations with Israel and the rest of the world regarding import taxes and import policy, monetary and financial issues, direct and indirect taxation, labor, agriculture, industry, tourism and insurance issues. This section will confine the discussion to the most important factors necessary to the implementation of the EU-PLO, which are import taxes and import policy, monetary and financial issues, and direct and indirect taxation.[43]

The jurisdiction of the PA over **import taxes and import policy** is provided in Article III of the Paris Protocol. This Article classifies goods into

[40] Annex V is the Paris Protocol.

[41] This Annex is the Protocol on Economic Relations between Israel and the PLO signed in Paris on 14 April 1994.

[42] EINHORN T., 'The Need for a Rule-Oriented Israeli-Palestinian Customs Union: The Role of International Trade Law and Domestic Law', Netherlands International Law Review, Vol. XLIV, 1997, 315. For future relations see, SCHIFF M., Trade Policy and Labor Services: Final Status Options for the West Bank and Gaza (Washington DC: The World Bank, 2002).

[43] With regard to the rest, the Paris Protocol introduced free movement of labor, agriculture, insurance, industry and tourism between Israel and the WBGS subject to each party's legislation.

three lists (A1, A2 and B) and grants the PA a different import and customs policy over each list. List A1 includes 29 consumer goods such as live sheep, dried yogurt, dried legumes, rye, barley, maize, and rice. These goods can be only imported in quantities agreed upon with Israel from Jordan, Egypt or any other Arab countries. List A2 includes 18 consumer goods such as fresh and frozen bovine meat, coffee, tea, wheat or meslin, wheat or meslin flour, and sesame seeds. These goods can be imported in quantities agreed upon with Israel from all countries. List B includes mainly investment goods, such as equipment and inputs for the pharmaceutical and wood industries, necessary for Palestinian economic development. These goods can also be imported from all countries.[44]

The PA has an independent import and import tax policy over all goods in list A1 and A2. These goods are exempted from Israeli trade regulations, which means that the PA can determine and change the rates of customs, purchase tax, levies, excises and other charges, licensing requirements, procedures and standard requirements within the agreed quantities. With regard to List B, the PA has only full responsibility for the rates of customs, purchase taxes; levies, excises and other charges but not the license requirement, procedures and standards. With respect to all goods not specified in Lists Al, A2 and B, or those exceeding the agreed quantities, Israeli rates as changed from time to time shall serve as the minimum basis for the PA. The PA may decide on any upward changes in the rates. Finally, the PA will levy VAT at one rate on both locally produced goods and services and on imports by Palestinians, whether covered by the three lists or not, and may fix it at a level of 15-16 percent.[45]

The jurisdiction of the PA over **monetary and financial issues** is provided in Article IV of the Paris Protocol. This Article created the Palestinian Monetary Authority (PMA) in the WBGS to act as a Central Bank.[46] The PMA has the powers and responsibilities for the regulation and implementation of the following monetary policies:

(i) The PMA will serve as the PA's official economic and financial advisor.
(ii) The PMA will serve as the sole financial agent, locally and internationally, to the PA and public sector bodies.
(iii) The foreign currency reserves (including gold) of the PA and all Palestinian public sector bodies will be deposited solely with the PMA and managed by it.
(iv) The PMA will act as the lender of last resort to the banking system in the WBGS.

[44] KANAFANI N., Trade Relations between Palestine and Israel: Free Trade Area or Customs Union? (Ramallah: Palestinian Economic Policy Research Institute (MAS), December 1996).
[45] For a critical view of these lists see, KESSLER V., Palestinian's External Trade Performance under the Paris Protocol: Hopes and Disillusions, The European Commission, June 1999, pp. 41-45.
[46] ARNON A. and others, The Palestinian Economy: Between Imposed Integration and Voluntary Separation (Koln: Brill, 1997) p. 138.

(v) The PMA will authorize foreign exchange dealers and will exercise control (regulation and supervision) over foreign exchange transactions within the WBGS and with the rest of the world.
(vi) The PMA will supervise and regulate banks, including their local and foreign activities, and the licensing of banks formed locally and of branches, subsidiaries, joint ventures and representative offices of foreign banks and the approval of controlling shareholders.
(vii) The PA will have the authorities, powers and responsibilities for the regulation and supervision of capital activities in the WBGS, including the licensing of capital market institutions, finance companies and investment funds.

Finally, it is important to bear in mind that the New Israeli Sheqel (NIS) is one of the circulating currencies in the WBGS and legally serves there as means of payment for all purposes including official transactions. Any circulating currency, including the NIS, will be accepted by the PA and by all its institutions, local authorities and banks, when offered as a means of payment for any transaction. However, the Israelis and the Palestinians will continue to discuss, through the Joint Economic Committee, the possibility of introducing mutually agreed Palestinian currency or temporary alternative currency arrangements for the PA.[47]

The **direct and indirect taxation policy** of the PA is provided in Articles V and VI of the Paris Protocol. Article V gives the PA full authority to determine and regulate direct taxation, including income tax on individuals and corporations, property tax, municipal taxes and fees. Also the PA has the right to levy direct taxes generated by economic activities within the area under its tax responsibility and may impose additional taxes on its residents (individuals and corporations) who conduct economic activities in Israel.[48] Yet, Article VI restricts the right of the PA to determine and regulate indirect taxation. The right of the PA to indirect taxation includes the following:
(i) The Palestinian tax administration will levy and collect VAT and purchase taxes on local production, as well as any other indirect taxes, in the WBGS.
(ii) Purchase tax rates on locally produced and imported goods in the WBGS must be identical to those in Israel.
(iii) The Palestinian VAT rate shall not be less than 2 percent below the Israeli VAT rate; the present Israeli/Palestinian VAT rate is 17 percent.

[47] HAMED O., Current Monetary Arrangements between Israel and the WBGS and Possible Alternatives, The European Commission, March 1999. BARNETT S., 'Monetary Policy in the West Bank and Gaza Strip in the Absence of a Domestic Currency'. In: KANAAN O. and others, The Economy of the West Bank and Gaza Strip: Recent Experience, Prospects, and Challenges to Private Sector Developments (Washington DC: IMF, 1998) p. 29.
[48] NAQIB F., 'Economic Relations between Palestine and Israel during the Occupation Era and the Period of Limited Self-Rule', Economic Research Forum for the Arab Countries, Iran and Turkey, 2000, p. 7. http://www.erf.org.eg/uploadpath/pdf/2015%20Naquib%20website.pdf

(iv) The PA will decide on the maximum annual turnover for businesses to be exempted from VAT, within an upper limit of US $12,000.
(v) For VAT purposes, the PA tax authority will include all permanent businesses registered or which will be registered with the PA VAT administration in the WBGS.
(v) The principles above also apply to wage and profit tax on financial institutions.
(vi) The clearance of VAT revenues will be established between the Israeli and the Palestinian tax authorities in order to regulate all Palestinian claims in Israel and vice versa.[49]

Therefore, in accordance with the Paris Protocol, the PA and Israel have shared powers and responsibilities for the regulation of Palestinian economic life. The PA has full powers and responsibilities for all economic activities with a local dimension such as monetary and financial policy, except for the issuance of a Palestinian currency, and direct tax and insurance issues. On the other hand, Israel has retained powers and responsibilities for all economic activities with an international dimension such as import and import tax policy, indirect taxation and a veto over the introduction of an independent Palestinian currency. In this regard, the PA must follow Israeli rules, rates and standards. For example, the PA cannot determine customs tariffs, purchase tax, levies and surcharges on goods not included in the three lists, nor can it impose a VAT rate 2 percent below that of Israel.

2.3. PA legal practices

The PA commenced its legal jurisdiction over the WBGS by enacting a resolution stating that all laws, regulations and rules operative on and prior to 5th June, 1967 in the WBGS, would be applicable until unified.[50] The PA then enacted another resolution assuming all powers, responsibilities and authorities included in the laws, by-laws, orders and proclamations valid in the WBGS on 19th May 1994.[51] It is an interesting question as to why the PA did not adopt the first date as a starting point for the legal system as well.

The PA chose June 1967, the date of the occupation of the WBGS by Israel, for two important reasons:

(i) The first reason is political aimed at emphasizing the fact that the Israeli occupation of the WBGS was illegal, that Israel had no legal right to enact

[49] DUMAS J., Fiscal Leakage in the West Bank and Gaza Strip, European Commission, June 1999.
[50] Resolution No. 1 of 1994. Palestine Official Gazette, Issue no. 1, 20/11/1994, p. 10.
[51] Law regarding Transfer of Authorities and Powers No. 5 of 1995. Palestine Official Gazette, Issue no. 2, 08/01/1995, p. 17.

legislation changing the nature and structure of the Palestinian legal system and such changes would be null and void. It is important to mention that the Fourth Geneva Convention states that, in principle, occupying authorities are not allowed to change the legal nature of an occupied territory.[52]

(ii) The second reason is a legal one designed to screen and revise all Israeli legislation enacted in the WBGS.[53] In other words, the PA did not adopt the May 1994 date, the day when the PA took over responsibility for the WBGS, in order to repeal all military orders that contradict its legal jurisdiction. However, this does not mean that Israeli military orders enacted after June 1967 are irrelevant. The PA Law on the Transfer of Authorities and Powers No. 5 of 1995 clearly recognizes Israeli military orders enacted in the WBGS as a valid source of legal powers and responsibilities.

As a means to reiterate its right to exist and to exercise legislative powers, one of the first steps taken by the PA was the enactment of Law No. 2 of 1995 relating to Revocation of Certain Resolutions and Military Orders.[54] This Law repealed 46 Israeli military orders in force in the GS such as Proclamation on the Assumption of Authority by the Israeli Defense Forces No. 1 of 1967, Military Order on Security Instructions of 1970, Military Order on the Prohibition of Incitement Activities and Hostile Propaganda No 62 of 1967, Military Order on the Surrender of Arms and War Equipment No. 4 of 1967.

As a second step, the PA enacted Decision No. 20 of 1998 concerning the Revocation of Certain Resolutions and Military Orders[55], repealing 87 other Israeli military orders in the GS. These orders include Military Order on Road Transport Ordinance No. 1002 of 1989, Military Order on Income Tax No. 982 of 1989, Military Order concerning Arrangements in Consequence of Changes in the Currency Exchange Rate No. 518 of 1975, Military Order on the Closure of Banks in the Region No. 18 of 1967, and Military Order on Currency Control No. 719 of 1981.

A review of the military orders included in the 1994 Law reveals that they related to security in the GS and conflicted, in one way or another, with the PA's right to exist. The Decision of 1998 repealed most of the military orders related to the 40 civil matters transferred to the PA since these orders conflicted with or obstructed the PA's right to regulate and organize the daily

[52] For example, Article 64 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, signed in Geneva 12/08/1949.
[53] The PA's right to revise Israeli military orders is explicitly mentioned in Article IX (2) of the Declaration of Principles, which states: "Both parties will review jointly laws and military orders presently in force in remaining spheres".
[54] Palestine Official Gazette, Issue no. 4, 06/05/1995, p. 8.
[55] Palestine Official Gazette, Issue no. 23, 08/06/1998, p. 60.

lives of Palestinians in the GS. It must be noted that these two regulations only related to the GS and not to the WB, which means that the PA had greater legislative powers and responsibilities in the GS than in the WB. Taking into consideration that these two regulations are only applicable in the GS, are the related Israeli orders still valid in the WB? The legal practices of the PA in the WB indicate that these military orders are invalid since the PA did not differentiate between the WB and GS in its legislative process. The PA did not apply these two laws to the WB in order to avoid its partial jurisdiction there.

To date, the PA has introduced more than 500 pieces of legislation on a wide variety of topics, including agriculture, economic development, civics, crime, health, and the environment.[56] Some legislation reflects PA interest in safeguarding the basic rights of its citizens, for example the Care and Rehabilitation of Disabled Persons Law No. 4 of 1999[57], Reformatory and Rehabilitation Centers for Prisoners Law No. 6 of 1998[58], the Civil Status Law No. 2 of 1999[59], the Higher Education Law No. 11 of 1999[60] and the Labor Law No. 7 of 2000[61]. Other laws, such as the Palestinian Specification and Measures Law No. 6 of 2000[62], the Banking Law No. 2 of 2002[63], the Commercial Agency Law No. 2 of 2000[64], and the Investment Law No. 1 of 1998[65] reflect the aim of the PA to create a sound economic infrastructure. The PA, having chosen the path of a free market economy[66], is well aware of the necessity of enacting new modern legislation aimed at encouraging investment and promoting economic prosperity.[67]

Finally, and most recently, the PA enacted the Palestine Amended Basic Law[68], which guarantees Palestinians basic rights such as citizenship, housing, information, human rights, legal representation and other important rights.[69] It also regulates the functions of the three authorities that comprise the PA according to the principle of the separation of powers between the executive, legislative and judiciary authorities and, most importantly, separates the chair of the prime minister from that of the president.[70] Finally, the Basic Law states

[56] For more see, ROBINSON G., 'The Politics of Legal Reform in Palestine', Journal of Palestine Studies, Vol. XXVII, no. 1, Autumn 1997, p. 51.
[57] Palestine Official Gazette, Issue no. 30, 10/10/1999, p. 36.
[58] Palestine Official Gazette, Issue no. 24, 01/07/1998, p. 78.
[59] Palestine Official Gazette, Issue no. 29, 17/07/1999, p. 6.
[60] Palestine Official Gazette, Issue no. 27, 08.12/1998, p. 28.
[61] Palestine Official Gazette, Issue no. 39, 25/11/2001, p. 7.
[62] Palestine Official Gazette, Issue no. 36, 19/03/2001, p. 63.
[63] Palestine Official Gazette, Issue no. 41, 06/06/2002, p. 5.
[64] Palestine Official Gazette, Issue no. 32, 29/02/2000, p. 92.
[65] Palestine Official Gazette, Issue no. 23, 08/06/1998, p. 5.
[66] IMF, 'West Bank and Gaza Strip Adopts Outward-Oriented Economic Strategy', IMF Survey, January 22, 1996, p. 1.
[67] FARES, Samer and Feras Milhem, Philosophy of Legislation in Palestine (Birzeit University, Institute of Law- 1998).
[68] Palestine Official Gazette, Special Issue, 19/03/2003.
[69] Article 9-33 of the amended Basic Law.
[70] Article 34-109 of the amended Basic Law.

that the Palestinian economy is a free market economy, although the PA can establish public holding companies in accordance with the law. Economic activities are free and protected by law. Private properties are also protected and cannot be confiscated except in the public interest, according to law and with payment of just compensation.[71]

The regulatory framework for the Palestinian economy is therefore in the process of being developed and key laws still need to be adopted. However, the PA legal and thus legislative jurisdiction is not exclusive. The PA has legal jurisdiction over internal economic affairs but no legislative jurisdiction over economic activities with an international dimension. An understanding of the territorial and economic jurisdiction of the PA and its legal practices on the ground is important to determine its ability to implement the free trade area with the EU. After reviewing the obligations of the EU-PLO and the jurisdiction of the PA as stipulated in Israeli-Palestinian agreements, it is obvious that there is a clear contradiction between the legal obligations of the PA as provided in the EU-PLO and its actual legislative capacity under Palestinian-Israeli agreements. The EU-PLO conceives a free trade area between Palestine and the EU which entails too many changes to the current Palestinian legal system in light of the obligations required. It is clear that the PA does not have full legislative power and this might hinder the achievement of a free trade area. The real extent of this contradiction between the EU-PLO and PA legislative powers can only be made clear by comparing each economic element of the free trade area with the legislative authority of the PA, or the compatibility of the Palestinian legal system with the EU-PLO.

[71] Article 21 of the amended Basic Law.

SECTION THREE:
The Road to a Free Trade Area with the European Union and the Palestinian Legal System

1. The nature and obligations of the EU-PLO Association Agreement

The EU-PLO Association Agreement aims to implement the objectives of the EMP's Barcelona Declaration.[72] The basic principle of the EU-PLO is to progressively establish a free trade area between the EU and Palestine. Accordingly, a deeper look at the economic components of the EU-PLO Association Agreement must first take place in order to understand and identify the legal status and legal obligations necessary to achieve the free trade area envisaged.

The EU-PLO consists of 73 articles divided under six titles dealing with (i) the free movement of goods (Articles 3-26); (ii) payments, capital, competition, intellectual property and public procurement (Articles 27-34); (iii) economic cooperation and social development (Articles 35-55); (iv) cooperation on audio-visual and cultural matters, information and communication (Articles 56-60); and (vi) institutional, general and final provisions (Articles 63-75). The EU-PLO also includes three Protocols, namely Protocol 1 on arrangements applying to imports into the Community of agricultural products originating in the West Bank and Gaza Strip; Protocol 2 on arrangements applying to imports into the West Bank and Gaza Strip of agricultural products originating in the Community; and Protocol 3 concerning definition of the concept of originating products and methods of administrative cooperation.[73]

A comparison of the structure of the EU-PLO with the necessary requirements of the free trade area reveals that the EU-PLO has, in principle, included all the necessary economic components apart from the right of establishment and services. Therefore, the EU-PLO excludes the free movement of services and establishments from the scope of the free trade area between the EU and Palestine.

The first two titles of the EU-PLO comprise all the other economic

[72] For more on the EMP and the Association Agreements see, HARDY D. and others, 'Addendum. Implementation of the European Union Association Agreements'. In: IQBAL Z. (ed.), Macroeconomic Issues and Policies in the Middle East and North Africa, (Washington D.C.: IMF, 2001). REIFFERS Jean-Louis and TOURRET Jean-Claude, 'Investing in a Euro-Mediterranean Free Trade Area', Institute de la Mediterranee, February, 2000. HOEKMAN Bernard, 'Deep Integration, Nondiscrimination, and Euro-Mediterranean Free Trade', World Bank Working Paper, 2002. GHESQUIERE Henri, 'Impact of European Union Association Agreements on Mediterranean Countries', IMF Working Paper, August 1998. El-ERIAN M. and TAREQ S., 'Economic Reform in the Arab Countries: A Review of Structural Issues'. In: EL-NAGGAR S. (ed.), Economic Development of the Arab Countries (IMF: Washington DC, 1993). ZARROUK J., 'Linkages between Euro-Mediterranean and Arab Free Trade Agreements'. In: DESSUS S. and others (eds.), Towards Arab and Euro-Med. Regional Integration (Paris: OECD, 2001).

[73] The EU-PLO Association Agreement is similar to the association ageements signed with Tunisia, Morocco, Algeria and Egypt.

components necessary to establish a free trade area. However, in order to understand the true extent of this free trade area and the scope of each party's obligations, an examination of each of these components must be undertaken. These components are the free movement of goods, payments, capital, competition, intellectual property and public procurement

1.1. The free movement of goods

The EMP calls for a free trade area in industrial goods between the EU and the Mediterranean countries. However, since most of these countries have enjoyed this freedom under the 1970s' cooperation agreements, this implies that liberalization will mainly come from the Mediterranean countries committing themselves to gradually reduce tariffs on industrial products of EU origin to zero. While domestic industry in the Mediterranean countries is subjected to gradual liberalization that will prepare it for greater competition with EU products, this will mean the loss of much-needed revenue from the tariffs and charges charged on products of EU origin.[74]

Agriculture, where the Mediterranean countries could gain significantly in terms of greater export opportunities, was largely excluded from the free movement of goods. The objective of the EMP is to gradually liberalize trade in agricultural goods but in concrete terms it largely maintains the status quo of the preferential arrangements in the cooperation agreements and offers only limited improvements in access for specific products through the expansion of tariff quotas and reduction/elimination of tariffs for specific quotas. Negotiations to improve existing agricultural concessions are to be initiated once the agreements come into force. The exclusion of agricultural products from the scope of the EMP limits the potential benefit to the Mediterranean countries, especially as these products constitute a large proportion of their total exports.[75]

The main principle of the EU-PLO's liberalization of goods is included under Article 3, entitled "basic principles". This Article declares the progressive establishment of a free trade area in goods over a transitional period, not extending beyond December 31, 2001. Taking into consideration the current level of development of Palestinian industry and the problems it faces as a result of occupation, it is strange that the EU-PLO calls for full achievement of the free trade area in goods with Palestine in less than five years, a very short period

[74] HOEKMAN, Bernard and DJANKOV, Simeon: 'Catching up with Eastern Europe? The European Union's Mediterranean Free Trade Initiative', Policy Research Working Paper: The World Bank, No. 1562, January 1996, p. 13.
[75] MINASI, Nicola, 'The Euro-Mediterranean Free Trade Area and its Impact on the Economies Involved', Jean Monnet Working Papers in Comparative and International Politics, No.16, October 1998, p. 2. http://aei.pitt.edu/archive/00000407/01/jmwp16.htm

compared with other association agreements. The association agreements with other Mediterranean countries have declared gradual establishment of the free trade area over a transitional period lasting a maximum of 12 years from the date of implementation.[76] The EU-JAA, for example, came into force in May 2003 and therefore the free trade area between the EU and Jordan is to be achieved by 2015, even beyond the Barcelona Declaration's target date of 2012.

Although the economic infrastructure and institutions of these countries are much better developed than those in Palestine, the EU-PLO calls for full accomplishment of the free trade area between Palestine and the EU in less than five years! This demonstrates that the Palestinian negotiator did not take the negotiations and preparations for the EU-PLO seriously and also that the European partners failed to pay enough attention to the reality of the Palestinian economy.[77] A long transitional period to achieve a free trade area in goods means, in the EMP's context, that Palestinian products would enjoy free access to EU markets, while charges on EU imported products are phased out over a long period of time. This would allow the Palestinian Customs Authority to exploit the cumulative revenues to develop and prepare Palestinian economic infrastructure and institutions to the free-of-charge access of EU products into Palestinian markets. This privilege would give Palestinian institutions the time to adapt to the internationalization of the Palestinian goods market and thus, the ability to survive strong competition with global and well-developed EU companies. It would also make Palestinian products more competitive since EU products would pay charges for importation into Palestinian markets.[78] The Palestinian negotiator deprived Palestinian economic institutions of this privilege by accepting a short transitional period, which has meant in practice that the Customs Department must abolish all charges on EU imports and lose potential revenue.

The other basic principle included in Article 3 of the EU-PLO is that the free trade area must be consistent with the provisions of the General Agreement on Tariff and Trade of 1994 (GATT) and the other multilateral agreements on trade in goods annexed to the agreement establishing the World Trade Organization (WTO). Trade in goods between the EU and Palestine must therefore be concluded in accordance with GATT rules. These include the most-favored-nation principle, by which Palestine must grant EU products or like products treatment no less favorable than that granted to any other country. Furthermore, Palestine

[76] This rule does not apply to Israel since it has a free trade area with the EU under the Cooperation Agreement signed in the 1970s.

[77] Some believe the main PLO objective from the conclusion of the EU-PAA was not the economic component but rather the political aim of EU political recognition of the Palestinian Authority.

[78] The PA must also reform its tax regime to absorb the negative effects. For more see, ABED George, 'Trade Liberalization and Tax Reform in the Southern Mediterranean Region', IMF Working Paper, April 1998.

must treat EU goods like national goods, i.e. Palestine should not impose taxes and charges, or laws and regulations hindering the internal sale, purchase or use of EU goods in Palestinian markets. The implementation of the GATT on EU-Palestine relations requires Palestine to adopt the agreements related to the facilitation of trade in goods such as the Agreement on Technical Barriers to Trade, the Anti-dumping Agreement (Agreement on Implementation of Article VI of the GATT 1994) and the Agreement on Safeguards.

Accordingly, it is quite obvious that the EU-PLO has in fact imposed the GATT and its agreements on Palestine even though Palestine is not a WTO member. Such direct and immediate implementation of GATT rules and agreements on Palestine damages the Palestinian market since the measures outlawed are the last defense protecting Palestinian products from foreign competition. In this regard, it is important to keep in mind that the WTO usually grants developing countries, which include Palestine, a period of five years grace to prepare for the implementation of the GATT rules since the WTO is well aware of difficulties in the economies of developing countries and the dangers of rapid implementation.

In conclusion, the Palestinian negotiator failed to protect Palestinian products and markets from stronger and better developed EU products. The Palestinian negotiator could have at least prolonged the transitional period of the implementation of the free trade area with the EU to 2012 or could have rejected the application of the GATT to EU-Palestinian trade relations until Palestine joins the WTO.

Following Article 3 of principles, the EU-PLO title of goods divides into three chapters. The first chapter deals with industrial products, the second deals with agricultural and fisheries products and the third chapter explains common provisions.

Industrial products

The EU-PLO regulates the free movement of industrial products between the EU and Palestine under Articles 4-10. Article 4 limits the scope of the EU-PLO to products originating in the Community and Palestine and the territories included in Annex II.[79] The definition of the term "originating products" is enclosed in Protocol 3 to the EU-PLO.[80] Article 5 prohibits both parties from

[79] Annex II to the Treaty establishing the European Community (EC Treaty) lists overseas countries and territories to which the provisions of part four of the EC Treaty apply.

[80] Article 25 states that: "The concept of 'originating products' for the application of the provisions of the present Title and the methods of administrative cooperation relating to them are set out in Protocol 3. The Joint Committee may decide to make the necessary adaptations to this Protocol with a view to the implementation of accumulation of origin as agreed in the Declaration adopted at the Barcelona Conference."

introducing new customs duties on imports, or any other charge having an equivalent effect on trade between the Community and Palestine. Article 6 states that the EU allows the import of products originating in Palestine without customs duties or any other charge having equivalent effect and free of quantitative restrictions or any other measure with equivalent effect. Article 7 excludes agricultural components in respect of goods originating in Palestine.[81] Article 8 demands that once the Agreement comes into force, Palestine abolish all customs duties and charges having equivalent effect applicable on imports of products originating in the Community, other than those listed in Annexes 2 and 3. Annexes 2 and 3 list EU products on which Palestine can impose fiscal charges not exceeding 25 percent of the value. However, these charges must be phased out over a period of five years. Article 10 is a derogation allowing Palestine to take exceptional measures of limited duration to introduce, increase or re-introduce customs duties. Such measures may only apply to infant industries and to sectors undergoing restructuring or experiencing serious difficulties, particularly where those difficulties entail severe social problems.[82]

In conclusion, the EU-PLO contains the main elements to achieving a free trade area in industrial products. The Agreement prohibits all types of restrictions which are price-based measures (customs or other charges) and quantitative restrictions (quotas) on trade in industrial products between Palestine and the EU.[83] The EU has no right to impose restrictions on the import of any product of Palestinian origin. On the other hand, Palestine may not, in principle, restrict the import of EU products to Palestine apart from maintaining or imposing a 25 percent charge on products specified in Annex 2 for a five year period, after which the charge must be abolished. It is a positive step that the EU allowed Palestine to impose these restrictions, although the percentage is too low and the products too few in number to protect Palestinian industrial goods from their European counterparts.

Agricultural and fishery products

Agricultural and fishery products are regulated in Articles 11-14 of the EU-PLO. Article 11 defines the scope of this chapter to products originating in the Community and Palestine. Article 12 stipulates that the EU and Palestine should progressively establish greater liberalization of their trade in agricultural and fishery products of interest to both parties. The objective of this Article, unlike for industrial products, is to establish greater liberalization of trade in

[81] These components are enclosed in Annex II of the EU-PAA.

[82] For more see, VALDIVIESO R. and others, West Bank and Gaza: Economic Performance, Prospects and Policies (Washington D.C.: IMF, 2001) p. 112.

[83] For more on these restrictions see, JACKSON J., World Trade and the Law of GATT (Indianapolis: The Bobbs-Merrill Company, 1969) p. 305. Also see, FINLAYSON J. and ZACHER M., 'The GATT and the Regulation of Trade Barriers: Regime, Dynamic and Functions', International Organization, Vol. 35, No. 4, Autumn 1981, p. 579. MONTEIL P. and REINHART C., 'Do Capital Controls and Macroeconomic Policies Influence the Volume and Composition of Capital Flows? Evidence from the 1990s', Journal of International Money and Finance, Vol. 18, 1999, p. 619.

agricultural and fishery products, which means that it does not envisage a free trade area. The EU did not include agricultural and fishery products in the concept of the free trade area because EU powers in this regard are tied to the controversial Common Agricultural Policy which protects EU products from international competition.[84] Trade in agricultural and fishery products between Palestine and the EU is subject to arrangements agreed on in two protocols. Protocol 1 relates to products originating in Palestine and destined for the EU. Protocol 2 relates to products originating in the EU and destined for Palestine.[85]

Protocol 1 includes 22 Palestinian agricultural products that can be admitted to the EU market in accordance with special customs charges and quotas. For example, column 1 includes cut flowers and flowers buds. The EU must take nil customs duties on flowers coming from Palestine up to a quota of 1500 tonnes. For quantities exceeding that quota, Palestine must pay 100 percent custom duties. In other words, no reduction will be granted. On the other hand, Protocol 2 contains seven EU agricultural products that can be admitted to Palestinian markets according to special arrangements. For example, live bovine animals exceeding 300 kg in weight can be imported to Palestine for slaughter with zero customs duty up to a quota of 300 tonnes. So, this product is charged zero customs duties within the specified quota but for quantities exceeding that amount Palestine has the right to introduce further charges.

Finally, Article 14 of the EU-PLO states that, taking into consideration the volume of trade in agricultural products between the parties, the EU and Palestine should examine in the Joint Committee, product by product and on an orderly and reciprocal basis, the possibility of granting each other further concessions. In other words, this Article states that at the end of the transitional period and in accordance with the volume of trade in particular products, the EU might consider granting Palestine more concessions regarding quotas or customs reductions. Accordingly, a free trade area in agricultural and fishery products is not envisaged in the EU-PLO and in the other association agreements as a whole.[86]

Common provisions

Articles 15-26 of the EU-PLO are common provisions applying to all kind of goods, including those relating to agricultural and fishery products. Article

[84] For more see the EU official website: http://europa.eu.int/scadplus/leg/en/s04000.htm

[85] Article 13 of the EU-PAA.

[86] KANAFANI N., Association of Palestine with the European Union: The Present Framework and the Way Ahead (Ramallah: Palestine Economic Policy Research Institute, April 2000) p. 23.

15 states that the EU and Palestine should not introduce new restrictions on the trade of goods between themselves and that all quantitative restrictions on imports and measures having equivalent effect in trade, other than those agreed in the protocols and annexes to the agreement, must be abolished from the entry into force of the agreement. Article 16 states that products originating in Palestine and imported to the EU should not be accorded a treatment more favorable than that which the member states apply among themselves. Article 17 gives both parties the right to amend the protocols regarding agricultural products in light of its agricultural policy. Such amendments could be discussed in the Joint Committee.

Articles 18 and 19 grant the products of both parties national treatment in the territory of the other party and give both parties the right to establish customs unions, free trade areas or arrangements for frontier trade as long as they do not alter the trade arrangements provided in the agreement. Articles 20-24 allow the EU and Palestine to take appropriate safeguard measures in order to protect their own products in cases of dumping, or if excessive imports of a particular product are taking place, or on the grounds of public morality, public policy or public security, or the protection of health and life of humans, animals or plants, or the protection of national treasures possessing artistic, historic or archaeological value, or the protection of intellectual, industrial and commercial property, or of regulations concerning gold and silver. Finally, Article 26 indicates that the nomenclature to the agreement must be used for the classification of goods in trade between the parties.

All in all, the EU-PLO's chapter of goods demands that tariff and non-tariff barriers to trade in manufactured products be progressively eliminated. It also states that with due respect to the results achieved within the GATT negotiations, trade in agricultural products will be progressively liberalized through reciprocal preferential access among the partners. Thus, while liberalization in the industrial sector is faster than liberalization promoted at a global level by the WTO, that of the agricultural sector is as slow as that of the WTO. Therefore, there is a clear imbalance between the industrial sector and the agricultural sector. This asymmetry can be found in all the EU association agreements.[87] Furthermore, the provisions of the free movement of goods oblige Palestine to abolish all customs duties and charges having equivalent effect on all EU imported products. These obligations will definitely require legislative deregulation by Palestine, which is something Palestine cannot always do, as discussed later.

[87] MINASI Nicola, The Euro-Mediterranean Free Trade Area and its Impact on the Economies Involved, University of Catania, 1998, p. 5. http://www.fscpo.unict.it/EuroMed/jmwp16.htm

1.2 The free movement of payments and capital

Financial transactions are generally classified into current and capital transactions. This classification is vital because both current and capital transactions are subject to a certain set of legal rules. Financial transactions are considered current transactions if they give rise to the immediate return of goods or services or if their counterpart is the receipt. In other words, payments for current transactions are payments not for the purpose of transferring capital.[88] In contrast, financial transactions are considered as capital transactions if they give rise to a future return or if their counterpart is a claim to a future return.[89] According to this definition, if a Palestinian imported a German car, the payment for this transaction should be considered as a current payment since its return is in goods (the car). However, if a Palestinian invested in the German stock market, this transaction would be considered capital movement since its return is a future claim (future profit).

The common strategy of the EMP regarding current payments and capital movements in the Mediterranean region is to "encourage the liberalization of current account payments with a view to full liberalization of capital movements as soon as possible".[90] The EMP has liberalized all current payments but not capital movements. The EMP with Tunisia, Algeria, Morocco and Egypt only requires the liberalization of capital movements related to direct foreign investment in these countries by EU firms in companies formed in accordance with existing laws and income that can be liquidated or repatriated. The EMP with Jordan liberalizes all capital movements from the EU to Jordan and all direct foreign investment from Jordan to the EU. The outflow of capital from Jordan to the EU is subject to the relevant local laws. Meanwhile, the EMP with Lebanon and Israel liberalized all capital movements between the EU and these two Mediterranean countries.[91]

Current payments

The status of EU current payments with Palestine is stipulated in Article 27 of the EU-PLO as follows:

Subject to the provisions of Article 29, the Parties undertake to impose no restrictions on any current payments for current transactions.[92]

[88] BURROWS F., Free Movement in European Community Law (Oxford: Clarendon Press, 1987) p. 278.
[89] For more see, EDWARDS R., International Monetary Collaboration (New York: Transnational Publishers, 1985) pp. 394 and 443. See also, EVANS J., 'Current and Capital Transactions: How the Fund Defines Them', IMF Finance and Development Journal, Vol. 5, No. 3, 1968, 30.
[90] Common strategy of the European Council of 19 June 2000 on the Mediterranean Region (2000/458/CFSP), Official Journal L 183, 22/07/2000.
[91] NSOULI S. and RACHED M., 'Capital Account Liberalization in the Southern Mediterranean Region', IMF Paper on Policy Analysis and Assessment, September 1998, p. 8.
[92] This Article is identical to Article 38 of the EU-Algeria Association Agreement and Article 33 of the EU-Tunisia Association Agreement and the EU-Morocco Association Agreement, and Article 31 of the EU-Egypt Association Agreement.

This Article obliges the EU and Palestine, except in the case of balance of payment difficulties, not to impose any restrictions on the making of payments and transfers for current international transactions.[93] Unlike Article 48 of the EU-JAA on current payments,[94] Article 27 does not confine the scope of current payments to those connected to the movement of goods, services, persons and capital. The definition of current payments in the context of the EU-PLO is broader than that of the EU-JAA since the former encompasses all payments and transfers for international current transactions.[95] The question that comes to mind in this regard is why the EU has adopted a broad definition of current payments in the Association Agreement with Palestine[96] and limited the definition of current payments in the Association Agreement with Jordan.[97]

It is not easy to answer the question why Palestine, with a less developed economy, should be subject to more obligations than Jordan. In order to make sense of this policy, it has been argued that the scope of current payments with Jordan and Palestine should be defined in accordance with the composition of their Agreements.[98] The EU-JAA calls for the liberalization of goods, services, persons and capital. Therefore, Article 48 requires the liberalization of current payments connected to these transactions.[99] Yet, the EU-PLO simply requires the liberalization of goods, which means that Article 27 should only include current payments connected to the free movement of goods. Although this definition is compatible with Palestine's current obligations in the Association Agreement, it puts Article 27 in violation of the International Monetary Fund (IMF) Agreement.

Another more likely interpretation is that since the EU-PLO did not liberalize capital movements, the EU adopted a broad definition of current payments with Palestine in order to guarantee the liberalization of the highest possible number of financial transactions. Since the EU-JAA demands the liberalization of capital movements, the EU has limited the scope of current payments with Jordan in order to facilitate the liberalization of the free

[93] KANAFANI N., Association of Palestine with the European Union: The Present Framework and the Way Ahead (Ramallah: Palestine Economic Policy Research Institute, April 2000) p. 23.

[94] Article 48 states: "Subject to the provisions of Articles 51 and 52, current payments connected to the movement of goods, persons, services and capital within the framework of this Agreement shall be free of restrictions". This article is identical to Article 32 of the EU-LAA and the EU-IAA.

[95] The text of Article 48 of the EU-JAA excludes money current payments from the scope of the Agreement. Such transactions include, for example, banking charges, representation expenses, and participation by subsidiary companies and branches in overhead expenses of parent companies situated abroad and vice versa, plus margins and deposits due in respect of operations on commodity terminal markets in conformity with normal commercial practice. The EEC Treaty listed these transactions in Annex III, which repealed by Article 73h of the Maastricht Treaty, and Council Directive 63/474 EEC, OJ B 125, 17/08/1963, 2240-2241, ESE: S –I (63-64), 45.

[96] The EU adopted the definition of the International Monetary Fund's guidelines enclosed in the Balance of Payments Manual as published in 1993, http://www.imf.org/external/pubs/ft/bopman/ bopman.pdf and amended in 2000. http://www.imf.org/external/pubs/ft/fd/2000/index.htm

[97] The EU-JAA has adopted Article 106 of the EEC Treaty's definition of current payments.

[98] Interviews with researchers at the Financial Integration and Capital Movements Unit, European Commission, in Brussels. This Unit is responsible for the drafting of the EMP's financial components.

[99] For more see, ZARROUK J., 'Linkages between Euro-Mediterranean and Arab Free Trade Agreements'. In: DESSUS S. and others (eds.), Towards Arab and Euro-Med. Regional Integration (Paris: OECD, 2001) p. 250.

movement of services, goods, persons and capital, with which the excluded transactions are connected. Therefore, they should be liberalized in tandem with them. For example, the European Court of Justice ruled in Luisi and Carbone that payments connected to tourism, business, education and health travel, which are among the invisible transactions, are covered by the rules of the free movement of services.[100] To emphasize this point, even though the EU-JAA did not fully regulate the free movement of services between the EU and Jordan[101], the EU-JAA explicitly restricted some services. For instance, Article 31 restricted air transport, inland waterways and maritime transport.

According to the obligations of Article 27 of the EU-PLO, Palestine must liberalize all current transactions with the EU. These transactions are as follows:

Current Transactions

I. Exchange Arrangement* (indirect restrictions)

1. Exchange rate structure (i.e. dual, multiple)
2. Exchange tax
3. Exchange subsidy
4. Forward exchange market (prohibited, official cover of forward operations required)

II. Arrangements for Payments and Receipts *(indirect restrictions)*

1. Prescription of currency requirements
2. Bilateral payments arrangements (operative, inoperative)
3. Other payments arrangements (regional, clearing, barter, and open accounts)
4. Administration of control
5. International security restrictions (in accordance with IMF Executive Board Decision No. 144-(52/51), in accordance with UN sanctions, domestic public policy and public security, others)
6. Payments arrears (official, private)
7. Controls on trade in gold (coins and/or bullion) (on domestic ownership and/or trade or external trade)

[100] Luisi and Carbone v Ministro del Tesoro, joined cases 286/82 and 26/83, on 31 January 1984, ECR 1984, p. 0377

[101] Article 37 of the EU-JAA. For more see, CREMONA M., 'Free Movement of Persons and Services in the Wider Europe'. In: XUEREB P. (ed.), The European Union and the Mediterranean: Closer Relations in the Wider Context (Malta: European Documentation and Research Centre, 1998) p. 114.

* Exchange arrangements and arrangements for payments and receipts are not current payments in nature. However, the IMF's Balance of Payment Manual and the Annual Report on Exchange Arrangements and Exchange Restrictions treated them as such because they usually end up indirectly restricting current payments.

8. Controls in export and import of banknotes (on exports and imports of domestic and foreign currency)

III. Resident Accounts

1. Foreign exchange accounts held domestically
2. Foreign exchange accounts held abroad
3. Accounts in domestic currency held abroad
4. Accounts in domestic currency convertible into foreign currency

IV. Nonresident Accounts

1. Foreign exchange accounts
2. Domestic currency account (convertible into foreign currency)
3. Blocked accounts

V. Import and Import Payments

1. Foreign exchange budget
2. Financing requirements for imports (minimum financing, advance payments, advance import deposit)
3. Documentation requirements for release of foreign exchange for imports (domiciliation requirements, pre-shipment inspection, letters of credit)
4. Import licenses and other non-tariff measures
5. Import taxes and/or tariffs
6. State import monopoly

VI. Export and Export Proceeds

1. Repatriation requirements
2. Financing requirements
3. Documentation requirements (letter of credit, guarantees, domiciliation, pre-shipment inspection, others)
4. Export licenses
5. Export taxes

VII. Payments for Invisible Transactions and Current Transfers

1. Trade-related payments

A. Freight and insurance (prior approval, quantitative limits, indicative limits, and/or bona fide test)

B. Unloading/storage costs (prior approval, quantitative limits, indicative limits, and/or bona fide test)

C. Administrative expenses (prior approval, quantitative limits, indicative limits, and/or bona fide test)

D. Commissions (prior approval, quantitative limits, indicative limits, and/or bona fide test)

E. Custom duties and fees (prior approval, quantitative limits, indicative limits, and/or bona fide test)

2. Investment-related payments
   A. Interest payments (prior approval, quantitative limits, indicative limits, and/or bona fide test)
   B. Profit and dividends (prior approval, quantitative limits, indicative limits, and/or bona fide test)
   C. Amortization of loans or depreciation of direct investment (prior approval, quantitative limits, indicative limits, and/or bona fide test)
   E. Payment and transfer of rent (prior approval, quantitative limits, indicative limits, and/or bona fide test)
3. Payments for travel
   International travel for pleasure, recreation, business and others (prior approval, quantitative limits, indicative limits, and/or bona fide test)
4. Personal payments
   A. Medical costs (prior approval, quantitative limits, indicative limits, and/or bona fide test)
   B. Study abroad costs (prior approval, quantitative limits, indicative limits, and/or bona fide test)
   C. Pensions (prior approval, quantitative limits, indicative limits, and/or bona fide test)
   D. Family maintenance and alimony (prior approval, quantitative limits, indicative limits, and/or bona fide test)
   E. Transfer abroad, family maintenance and alimony (prior approval, quantitative limits, indicative limits, and/or bona fide test)
5. Foreign worker's wages
   Transfer abroad of earnings by non-residents working in the country.
6. Credit card use abroad
   To pay for invisible transactions, family maintenance and alimony (prior approval, quantitative limits, indicative limits, and/or bona fide test)

7. Other payments, examples
   A. Subscription and membership fees (prior approval, quantitative limits, indicative limits, and/or bona fide test)
   B. Consulting and legal fees (prior approval, quantitative limits, indicative limits/bona fide test)
   C. Authors' royalties, family maintenance and alimony (prior approval, quantitative limits, indicative limits, and/or bona fide test)

VIII. Proceeds for Invisible Transactions and Current Transfers

1. Repatriation requirements
2. Surrender requirements

Source: IMF *Annual Report on Exchange Arrangement and Exchange Restrictions* 2002.

Capital movements

Capital movements between the EU and Palestine are provided for in Article 28 of the EU-PLO, which stipulates that:

1. With regard to transactions on the capital account of balance of payments, the Parties undertake to impose no restrictions on the movement of capital relating to direct investments in the West Bank and Gaza Strip in companies formed in accordance with current laws, nor on the liquidation and repatriation of the yield from such investments, or any profit stemming therefrom.
2. The Parties shall consult each other with a view to facilitating the movement of capital between the Community and the West Bank and Gaza Strip.[102]

Therefore, as regards EU companies established in Palestine, Foreign Direct Investment (FDI), from the EU to Palestine should be free of all restriction. In other words, EU member states have the right to restrict all capital transactions with Palestine except those related to FDI in EU companies already established in Palestine. From a Palestinian viewpoint, this means that Palestine has the right to restrict all capital transactions with the EU except the outflow of capital or the transfers of the yields, proceeds or the principals derived from liquidation, repatriation or profits of EU investments in Palestine.[103] Confining the liberalization of capital transactions to FDI and other operations connected to it clearly means that the EU has not perceived a free trade area in capital movements with Palestine and most of the Mediterranean countries.[104]

A comparison of Article 28 of the EU-PLO with Article 49 of the EU-JAA reveals that the former is less liberal than the latter.[105] Article 49(1) indicates that the EU should not impose restrictions on the movement of capital from

[102] This Article is identical to Article 34 with Morocco and Tunisia, Article 39 with Algeria and Article 32 with Egypt.
[103] HAKURA F., EU-Mediterranean and Gulf Trade Agreements (Bembridge: Palladian Law Publishing Ltd., 1999) p. 42.
[104] Only the EU association agreements with Lebanon and Israel (Article 31) have fully liberalized capital transactions with the EU.
[105] Article 49 of the EU-JAA states: "1. Within the framework of the provisions of this Agreement, subject to the provisions of Articles 50 and 51, and without prejudice to Annex VI referred to in Article 30(2)(a), there shall be no restrictions on the movement of capital from the Community to Jordan and on the movement of capital involving direct investment from Jordan to the Community. 2. The outflow of Jordanian capital to the Community, other than direct investment, shall be subject to the prevailing laws in Jordan. 3. The Parties will hold consultations with a view to achieving complete liberalization of capital movements as soon as conditions are met."

the Community to Jordan. In return, Jordan should not impose restrictions on the movement of FDI from Jordan to the Community. FDI includes, in addition to the principal capital, all transactions connected to the investment such as profits, returns and dividends, royalties and fees, repayment of loans, earning of natural persons and others.[106] In other words, capital movements from the EU to Jordan should be free of all restrictions and EU members have no right to restrict capital movements to Jordan. Furthermore, if we compare Article 28 with Article 31 of the EU-LAA, that the former not only liberalized foreign direct investment and transactions connected to it, but rather all capital transactions.

The most important factor of Article 28 of the EU-PLO is that it does not impose any major changes on the Palestinian legal system since it confines Palestinian obligations to the outflow of capital or the transfers of the yields, proceeds or the principal derived from liquidation, repatriation or profits of EU investments in Palestine.[107] This obligation is minor if we know that capital movements include very important transactions such as banking, insurance, financial markets and personal capital movements. These transactions would entail drastic changes in the Palestinian legal system if the EU-PLO required them to be liberalized.

1.3. Competition rules

The EMP requires Mediterranean countries to adopt the basic competition rules of the EU, in particular in respect of collusive behavior, abuse of dominant position, and competition-distorting state aid, and Articles 81, 82 and 87 of the treaty establishing the European Community (EC Treaty). Implementation of these rules should be adopted by the Association Council within five years. Until then, the GATT rules on the countervailing of subsidies will apply. State-aid compatible with EU rules on disadvantaged regions (Article 87 (3) (a) of the EC Treaty), can be applied to the Mediterranean countries during the first five years. Regional aid may be given by EU governments to regions in their countries with per capita incomes that are substantially below average or to areas where there is significant unemployment. The low level of per capita income in the Mediterranean countries in comparison with EU states should ensure that non-industrial specific state aid would be unconstrained in the medium term. The agreement also provides for enhanced transparency of state aid, each party agreeing to provide annual reports on the total amount and distribution of aid given.[108]

---

[106] SACERDOTI G., 'The Source and Evolution of International Legal Protection for Infrastructure Investments Confronting Political and Regulatory Risks', Center for Energy, Petroleum and Mineral Law and Policy, Vol. 5, May 1999 - January 2000, p. 24. http://www.dundee.ac.uk/cepmlp/journal/ .

[107] The IMF has classified these transactions as current payments and not capital movements. For more see, EVANS J., 'Current and Capital Transactions: How the Fund Defines Them', IMF Finance and Development Journal, Vol. 5, No. 3, 1968, 30.

[108] ALONSO-GAMO Patricia, 'Adjusting to New Realities: MENA, The Uruguay Round, and the EU-Mediterranean Initiative', IMF Working Paper, January 1997.

Moreover, despite the agreement with the Mediterranean countries to apply EU competition disciplines, the provisions of the association agreements on anti-dumping remain applicable to trade flows between partners because the security of market access rationale for regional integration is not met. Community analogue could have been included, under which it is required that from the entry into force of the EC Treaty, products originating in one member state and exported to another must be free of duties, quotas and measures of equivalent effect if they are re-imported. The enforcement of competition laws in the Mediterranean countries is important and could have major benefits in ensuring that the benefits of trade liberalization are realized. However, given the market structures existing in these countries, in particular the prevalence of state-owned enterprises, anti-competitive business practices might be a problem.[109]

Chapter two of title two of the EU-PLO specifies rules of competition, intellectual property rights and public procurements. Article 30 indicates that some practices are incompatible with the proper functioning of the agreement in so far as they may affect trade between the Community and the PA. These practices are as follows:[110]

(i) all agreements between undertakings, decisions by associations of undertakings and concerted practices between undertakings which have as their object or effect the prevention, restriction or distortion of competition;[111]
(ii) abuse by one or more undertakings of a dominant position in the territories of the Community or Palestine as a whole or in a substantial part thereof;[112]
(iii) any public aid which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods.[113]

These practices must be assessed on the basis of the criteria applied in Community competition rules.[114] Prior to the entry into force of the free trade area in goods by December 31, 2001, the Joint Committee must adopt the rules necessary to evaluate the practices of Palestinian companies. These rules must be derived from and be consistent with EU competition rules enshrined in the EC Treaty. In other words, the Joint Committee must adopt EU competition rules and practices in its evaluation of the practices and measures of Palestinian undertakings. Until the adoption of these rules, Palestine must use the provisions of the Agreement on Subsidies and Countervailing Measures of the WTO.[115]

[109] FAWZY S. and GALAL A. (eds.), Partnership for Development: New Roles for Government and Private Sector in the Middle East and North Africa (Washington DC: The World Bank 1999) p. 67.
[110] Paragraph 1 of Article 30 of the EU-PAA.
[111] This paragraph is identical to Section 1 of Article 81 of the EC Treaty.
[112] This Paragraph is identical to Section 1 of Article 82 of the EC Treaty.
[113] This Paragraph is identical to Section 1 of Article 87 of the EC Treaty.
[114] Paragraph 2 of Article 30 of the EU-PAA.
[115] Paragraph 3 of Article 30 of the EU-PAA.

The WTO Agreement[116] prohibits its members from granting subsidies to their enterprises, industry or group of enterprises or industries[117] for the purpose of supporting their export performance or supporting their domestic goods against imported ones.[118] In a case where a member has unlawfully granted or maintained such subsidies, resulting in injury, nullification, impairment or serious prejudice to the domestic industry of other members, the Agreement allows other members to seek fair compensation. If agreement on compensation cannot be reached, the Dispute Settlement Body should authorize the member with the complaint to take appropriate countervailing measures. These countervailing measures can only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of the Agreement and the Agreement on agriculture.[119] If the investigations conclude that the imposed subsidies are causing injury to another member's domestic goods, such members have the right to impose countervailing duties in accordance with the rules and conditions enclosed in Article 19 of the Agreement unless the subsidies are withdrawn.[120]

The EU criteria are laid down in Articles 81 and 82 of the EC Treaty. Article 81 prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between member states and which have as their object or effect the prevention, restriction or distortion of competition. Such practices include, for example, directly or indirectly fixing purchase or selling prices or any other trading conditions and limit or control of production, markets, technical development, or investment. The application of this Article can be suspended if these practices contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit. However, Article 82 prohibits any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it on the grounds that it is incompatible with the common market in so far as it may affect trade between member states.[121]

Accordingly, Article 30 of the EU-PLO means that the rules of EU competition law, in particular Articles 81 and 82, are already applicable in Palestine as far as trade between the internal market of the EU and Palestine is concerned. An agreement between undertakings having such an effect may already be void and unenforceable for and against its parties. Also, competitors

[116] World Trade Organization, The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts (Cambridge: Cambridge University Press, 1999) p. 231.
[117] Article 2 of the Agreement.
[118] Article 3 of the Agreement.
[119] Article 10 of the Agreement.
[120] For more see, HOEKMAN Bernard, 'Free Trade and Deep Integration: Antidumping and Antitrust in Regional Agreements', World Bank Working Paper, April 1998, p. 20.
[121] GRAIG Paul and DE BURCA Grainne, EC Law: Texts, Cases and Materials (Oxford: Clarendon Press, 1995) pp. 886-1064.

of participants to illegal agreements or companies affected by a dominant enterprise's abuse of power can already bring claims for discontinuation of restrictive practices and even for damages (under tort law) going back to the date of publication of the respective decision.[122]

With regard to the implementation of paragraph 1 (iii) on public aid, paragraph 4 allows Palestine to give public aid during the period prior to the implementation of the free trade area to undertakings in order to tackle specific development problems e.g. aid aimed at social problems, to repair damage caused by natural disaster, or in our case by occupation, or to promote economic development.[123] However, each party should ensure transparency in public aid by reporting annually to the other party on the total amount and distribution of aid given and by providing, upon request, information on aid schemes or on particular individual cases of public aid.[124]

With regard to industrial and fishery products referred to in Chapter 2 of Title 1, Paragraph 6 of Article 30 of the EU-PLO stipulates that Palestine must assess any contrary practices according to the criteria established by the Community on the basis of Articles 42 and 43 of the EC Treaty, in particular those established in Council Regulation No 26/62.[125] This is intended to avoid compromising the development of the EU Common Agricultural Policy and to ensure certainty in the law and the non-discriminatory treatment of the undertakings concerned. Therefore, the Commission has the sole power, subject to review by the Court of Justice, to determine whether the conditions provided for in the two preceding recitals are fulfilled as regards the agreements, decisions and practices referred to in Article 85 (now Article 81) of the EC Treaty. To enable the specific provisions of the Treaty regarding agriculture, in particular those of Article 39, to be taken into consideration, the Commission must, in questions of dumping, assess all the causes of the practices complained of and in particular the price level at which products from other sources are imported into the market in question. In light of its assessment, it must make recommendations and authorize protective measures.[126]

If the EU or Palestine consider that a particular practice is incompatible with paragraph 1 of Article 30, or is not adequately dealt with under the rules referred to in paragraph 3, or in the absence of such rules, and if such practice causes or threatens to cause serious prejudice to the interest of the other party or material injury to its domestic industry, including its services

[122] MARIA Alberto Santo, EC Commercial Law (The Hague: Kluwer Law International, 1996) p. 233.
[123] More examples can be found in Article 87of the EC Treaty.
[124] Paragraph 5 of Article 30 of the EU-PAA.
[125] Official Journal B 030 , 20/04/1962 P. 0993 - 0994.
[126] TILLOTSON John, European Commercial Law, 2ed Edition (London: Cavendish Publishing Limited, 1996) pp. 385-399.

industry, it may take appropriate measures after consultation within the Joint Committee or after 30 working days following referral for consultation. Such measures are provided for in EEC Council regulation No. 17 implementing Articles 85 (now Article 81) and 86 (now Article 82) of the Treaty[127] and most recently by Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of competition rules laid down in Articles 81 and 82 of the Treaty.[128] [129] With regard to practices incompatible with paragraph 1 (iii) on public aid, such measures, when the GATT is applicable to them, may only be adopted in accordance with the procedures and under the conditions laid down by the GATT or by any other relevant instrument negotiated under its auspices[130] and applicable between the parties.[131]

Furthermore, Article 31 stipulates that the Community and Palestine should progressively adjust any state monopolies of a commercial character by ensuring that by December 31, 2001, no discrimination exists regarding the conditions under which goods are procured and marketed between nationals of member states and the Palestinian people. State monopolies include monopoly of petroleum and tobacco. Also, Article 32 states that by December 31, 2001, neither party must enact or maintain any measure distorting trade between the Community and Palestine contrary to the parties' interests regarding public enterprises and enterprises to which special or exclusive rights have been granted.[132] Such enterprises include the exclusive right of some companies to import cement and cigarettes and the monopoly of the Palestinian Telecommunications Company over the telecommunications sector.[133] In other words and according to these two Articles, the Palestinian Authority must eliminate all state monopolies and all other exclusive rights given to private companies at the end of the transitional period in order to implement a free trade area with the EU.

1.4. Intellectual property rights

Article 33 states that both parties must grant and ensure adequate and effective protection of intellectual, industrial and commercial property rights

[127] Official Journal P 013, 21/02/1962 P. 0204 -211.
[128] Official Journal L 1, 04/01/2003 P. 0001 – 0025. On this Regulation see, LOWE Philip, 'Current Issues of EU Competition Law. The Competition Enforcement Regime', Northwestern Journal of International Law and Business, Vol. 24, 2004, p. 567.
[129] For more about competition rules see, EHLERMANN Claus-Dieter, 'The International Dimension of Competition Policy', Fordham International Law Review, Vol. 17, 1994, p. 833. EMMERT Frank, 'the Draft Constitution: Issues and Analyses: Introducing EU Competition Law and Policy in Central and Eastern Europe: Requirements in Theory and Problems in Practice', Fordham International Law Journal, Vol. 27, 2004, p. 642.
[130] The intended procedures and instruments are those enclosed in the Agreement on Subsidies and Countervailing Measures.
[131] Paragraph 7 of Article 30 of the EU-PAA.
[132] This Article is similar to Article 86 of the EC Treaty.
[133] FISHER S. and others, 'Economic Development in the West Bank and Gaza since Oslo', The Economic Journal, no. 111, June 2001, p. 270.

in accordance with the highest international standards, including effective means of enforcing such rights.[134] The question arises as to why the EU-PLO did not refer to TRIPS as the means to protect their intellectual, industrial and commercial property rights. It is important to acknowledge that TRIPS is not the most adequate and effective international agreement protecting intellectual property rights.[135] The most adequate and effective international standards are those enclosed in the following agreements:

- Berne Convention for the protection of literary and artistic works (Paris Act 1971),
- The Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome, 1961),
- Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Geneva Act 1977 as amended in 1979),
- Madrid Agreement concerning the International Registration of Marks (Stockholm Act 1967 as amended in 1979),
- Protocol relating to the Madrid Agreement concerning the International Registration of Marks (Madrid 1989),
- Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purpose of Patent Procedures (1977 as amended in 1980),
- The International Convention for Protection of New Varieties of Plants (UPOV) (Geneva Act 1991),
- Patent Cooperation Treaty (Washington 1970, amended in 1979 and 1984),
- Articles 27 to 34 of TRIPS with regard to patents for chemicals and pharmaceuticals,
- The Paris Convention for the Protection of Industrial Property (Stockholm Act 1967, amended in 1979).

To summarize, Article 33 means that in order to comply with the requirements of the free trade area with the EU, the PA must join these agreements. If problems arise relating to intellectual, industrial and commercial property rights affecting trading conditions, urgent consultations shall be undertaken within the framework of the Joint Committee, at the request of either party, with a view to reaching a mutually satisfactory solution.

1.5. Public procurement

Article 34 states that both parties agree on the objective of reciprocal and gradual liberalization of public procurement contracts and that the Joint

[134] At EU level, the regulation of intellectual property rights has been left to the competence of Member States. For more see, KENT Penelope, Law of the European Union (London: Financial Times Pitman Publishing, 1996) P. 213.
[135] ZALLIO Franco, 'Deep Integration, Euro-Med Free Trade and the WTO 2000 Negotiations', Arab Economic Forum Working Paper, No. 2014, 2000, p. 9.

Committee shall take the measures necessary to implement paragraph 1. Public procurement means the purchase by government of goods of all kinds, ranging from basic commodities to high-technology equipment and services (including construction services), procurement at sub-central level (for example, states, provinces, departments and prefectures), and procurement by public utilities.[136]

Article 34 requires the liberalization of public procurement contracts by opening up as many of these contracts as possible to international competition and not favoring domestic suppliers over foreign competitors. It is designed to make laws, regulations, procedures and practices regarding government procurement more transparent and to ensure they do not protect domestic products or suppliers, or discriminate against foreign products or suppliers. It also reinforces rules guaranteeing fair and non-discriminatory conditions of international competition. For example, governments will be required to put in place domestic procedures by which aggrieved private bidders can challenge procurement decisions and obtain redress in the event such decisions were made in a manner inconsistent with the law.[137]

2. The compatibility of the Palestinian legal system with the EU-PLO Association Agreement

The implementation of the EU-PLO has proven extremely difficult due to political, economic and factual factors. Israel did not recognize the EU-PLO and considered it to be inconsistent with Palestinian-Israeli Agreements, in particular with the Paris Protocol. Meanwhile, the Palestinian economy has collapsed as a result of Israeli measures in the Territories following the outbreak of the second Intifada. The Joint Committee on the implementation of the EU-PLO met in Ramallah on June 26, 2003 to discuss ways to facilitate trade between the EU and the WBGS and to fully implement the EU-PLO, including reform of the Palestinian legal system. This meeting was the second of its kind and the first for three years.

We will now analyze the existing Palestinian legal system in light of the obligations of each economic component in the EU-PLO. The accomplishment of the free trade area between the EU and Palestine requires the amendment of most, if not all, of relevant Palestinian regulations, such as tax and customs laws. Furthermore, it requires the enactment of completely new regulations relating to competition, foreign trade, intellectual property rights and procurement.

[136] The WTO has concluded an Agreement on Government Procurements, which took effect on January 1, 1996. For more see, http://www.wto.org/english/tratop_e/gproc_e/over_e.htm

[137] FOLSOM Ralph and others (eds.), European Union Law after Maastricht (The Hague: Kluwer Law International, 1996. pp. 73-133.

Accordingly, the EU-PLO requires Palestine to revise its legal system in the field of trade in goods, current payments and capital, competition, intellectual property and public procurements.

2.1. The free movement of goods

The EU-PLO defines the economic relationship between the EU and Palestine by envisaging a free trade area in industrial goods and the progressive elimination of all obstacles to trade in agricultural goods. The Paris Protocol on Economic Relations of April 1994 governs trade relations between the PA, Israel and the rest of the world. It also defines PA responsibilities in a number of economic spheres, including the movement of goods. The movement of Palestinian goods has been severely affected in recent years by restrictions imposed by the Israeli authorities on security grounds and which apply to the movement of both goods and persons within the WBGS and externally. The accomplishment of a free trade area in industrial and agricultural goods requires Palestine to adopt a new set of legal rules relating to technical regulations and standards, customs and taxes.

Technical regulations and standards

According to the Paris Protocol, standards in technical regulations and for industrial products in Palestinian imports should conform to Israeli standards, with the exception of certain goods under PA authority in Lists A1 and A2. It is obvious that the PA has very limited jurisdiction over standards and technical regulations. However and with an eye on the future, the PA established the Palestinian Standards Institute (PSI) aimed at setting Palestinian standards. The PSI was established in 1994, started operating in 1996 and is follows the pattern of administration of the Ministry of Trade and Economy. An important step on the road to a free trade area with the EU was achieved in 2000 with the enactment of the Palestinian Standards and Measurement Law No. 6 of 2000.[138] The aims of this Law are, among other things, the preparation, approval, review, modification and monitoring of the implementation of standards applicable to all products, except medicines, veterinary, serums and vaccines, the establishment of a national measurement system and supervision of its implementation, calibration, control and supervision of the use of measuring instruments, issue of conformity certificates including the Quality Mark, accreditation of tests and calibration laboratories and of certification bodies, and the conclusion of agreements with corresponding Arab, foreign, regional and international organizations.[139]

[138] Palestine Official Gazette, Issue no. 36, 19/03/2001, p. 63.

[139] For more on the implementation of the EU-Med Agreements see, OUVRARD Francoise, 'Report on the Position of Mediterranean Countries in the Free Movement of Goods'. In: MONJO Eduardo (ed.) Regional Program for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed market) (Maastricht: European Institute of Public Administration, 2004), P. 3.

Customs and tax law

According to the EU-PLO, once the Agreement comes into force Palestine is required to abolish all customs duties and charges having equivalent effect applicable on imports of products originating in the Community. In light of this obligation, Palestine must amend its customs legislation. Customs legislation in the WBGS is very complex and old since it is based on two different legal schools that prevailed in Palestine at the beginning and middle of the last century. The Jordanian Customs Law No. 1 of 1962[140] applies in the WB and the British Customs Law of 1929[141] applies in the GS. These laws have been amended numerous times by Israeli military orders[142] and finally by the reality of the Paris Protocol of 1994. Accordingly, these laws are incompatible with the best international trade and tariff rules introduced by the World Customs Organization, the World Trade Organization, and most importantly, EU rules and procedures. In other words, these regulations are an obstacle to the implementation of the EU-PLO. Therefore, it can be concluded that the implementation of the Association Agreement requires the enactment of a new modern customs law compatible with the best norms and standards applicable in the international community and the EU in particular.[143]

It must not be forgotten that the amendment of the Palestinian legal framework of tax and customs is outside the legal jurisdiction of the PA as provided in Article III of Paris Protocol. The PA has limited powers and responsibilities for import and import payments, which mean that the PA cannot, outside lists A1, A2 and B, create its own policy. With regard to certain products enclosed in List A1, A2 and B, the PA can determine increases or decreases in tariff rates. Other products fall under the PA's authority but are still subject to quantitative restrictions or Israeli standards. Accordingly, the PA must follow Israeli rates of customs, purchase tax, levies, excises and other charges, the regulation of licensing requirements, procedures and standard requirements. Legally speaking, since the Oslo Agreement stipulates that the PA's international economic agreements must be compatible with the Paris Protocol and this Protocol does not give the PA the jurisdiction over customs duties, it leads us to conclude that this obligation is invalid. Furthermore, Palestine cannot carry out this obligation since Israel controls international border crossings and is responsible for the collection of import taxes and customs in accordance with Israeli rates and charges, even if the Palestinian territories are the ultimate destination of the goods.

[140] Jordan Gazette, Issue no. 1591, 25/01/1962, p. 62.

[141] The Laws of Palestine (Drayton Collection), 1929, Chapter 42, p. 524.

[142] For example, the Military Order Amending Jordanian Customs Law (amendment No. 1) (No. 90) of 1967. Proclamation, Orders and Appointments (West Bank), Issue No. 6, 27/11/1967, p. 210. Also, the Military Order Amending the Customs Law of 1929 (amendment No. 1) (Gaza Strip) No. 340 of 1970. Proclamation, Orders and Appointments (Gaza Strip), Issue No. 20, 02/08/1970, p. 1413.

Despite these impediments, the PA is developing its regulatory system with respect to customs and tax law and is trying to prepare Palestine for the future. The PA has established directorates for VAT and Customs and Excise, unified under the Customs and Excise General Directorate of the Ministry of Finance. In terms of administrative capacity, it is essential to ensure the existence of strong custom directorates with real powers to effectively fulfill their roles within modern customs law.

The PA, supported and sponsored by the EU, has also begun the process of modernizing its customs legislation. The Palestinian Customs Department (PCD), supported by the German Government, has established a committee to draft a new modern customs law compatible with the best international customs standards, in particular those of the Kyoto agreement.[144] The committee has drafted the new Palestinian Customs Law, which is divided into three chapters. The first is general and includes definitions, restrictions, customs territories, data protection, offences, prosecution, confiscation, and other issues. The second deals with customs procedures in detail, such as customs control or Asycuda[145], inspections and other procedures. The third chapter covers debts, customs valuation, rules of origin, exemptions, refunds and other customs issues. The process of promulgating this Law has been adjourned as a result of the current difficult political conditions in Palestine.[146]

The legal framework of taxation in Palestine also dates back to British and Jordanian regulations, as amended by the Israeli occupation. Tax regulations in the WB comprise Income Tax Law No. 25 of 1964[147] and Property Tax Laws No. 30 of 1955.[148] Tax regulations in the GS comprise Income Tax Ordinance No. 13 of 1947[149], Company Profits Tax Ordinance No. 12 of 1947[150], Rural Property No. 5 of 1942[151], and Urban Property Tax Ordinance No. 42 of 1940.[152] VAT was introduced in 1976 and is covered by two separate but identical military orders issued by the Israeli

[144] This Committee consists of German professors and experts along with the PCD legal advisers.
[145] Asycuda is a computerized customs system which most foreign trade procedures adopt. The system handles manifests and customs declarations, accounting procedures, and transit and suspense procedures. Asycuda generates trade data that can be used for statistical economic analysis. The Asycuda software is developed in Geneva by UNCTAD and operates on micro in a client server environment under UNIX and dos operating system and RDBMS software. Asycuda takes into account the international codes and standards developed by ISO (International Organization for Standardization), WCO and the United Nations. Asycuda can be configured to suit the national characteristics of individual customs regimes, national tariffs and legislation. This information was provided by Mr. Dawoud Jaloudi, Asycuda project officer at the PCD.
[146] Information provided by advocate Mohammad Halasah, a formal legal adviser at the PCD.
[147] Jordan Gazette, Issue No. 1800, 17/10/1964, p. 1455.
[148] Jordan Gazette, Issue No. 1226, 16/05/1955, p. 480.
[149] Laws of Palestine, Issue No. 1568, 29/03/1947, p. 117.
[150] Laws of Palestine, Issue No. 1568, 29/03/1947, p. 75.
[151] Laws of Palestine, Issue No. 1182, 30/03/1942, p. 11.
[152] Laws of Palestine, Issue No. 1065, 20/12/1940, p. 275.

occupation authorities in the WBGS.[153] All these regulations are old, complex and designed to serve Israeli financial interests.

In order to develop the legal framework of taxes in Palestine, the PA has recently enacted Income Tax Law No. 17 of 2004. This Law replaced the different laws that prevailed in the WBGS, apart from VAT which remains under Israeli control. The new Palestinian Income Tax Law also unified the legal system of taxation in both the WB and GS[154] and puts Palestine closer to fulfilling the legal requirements of the free trade area with the EU.

With regard to the rules of origin, the PA has taken a very important step on the road to achieving a free trade area in goods by endorsing the new EU Protocol on rules of origin in July 2003, allowing the extension of the Pan-European system of cumulation of origin to the Barcelona Partners. The next stage aims at enacting Certification **of Origin legislation and amending the origin protocol in the relevant Euro-Mediterranean Agreement in order to insert the changes necessary for the application of diagonal cumulation.** Furthermore, new modern tax regulations and tax institutions in Palestine are an important pre-requisite to a dynamic free trade area with the EU. The Palestinian Authority has put in place a modern system of VAT, income tax, purchase tax, property tax and excise taxes. The Ministry of Finance has three major departments responsible for the administration of tax laws: the Customs and VAT Department, the Income Tax Department and the Property Tax Department. Due to the absence of any formal fiscal or customs borders with Israel, Israel continues to be the major collector of Palestinian revenue, receiving two thirds of the tax for later transfer to the PA. The fragmentation of the tax administration has been exacerbated by the absence of coordination between WB and GS and tax administrations.[155] **Accordingly, the introduction of a modern customs system and regulatory framework on the basis of international best practices are a pre-requisite to establish a dynamic free trade area with the EU.**

2.2. The free movement of current payments and capital

Current payments transactions

The EU-PLO requires the full liberalization of current payments between the EU and Palestine, which means that Palestine must abolish all restrictions on

[153] In the WB, Order on Law of Customs and Excises on Local Products (Amendment no. 2) (West Bank) (No. 658), 1976, Proclamation, Orders and Appointments (West Bank), Issue no. 38, 01/02/1977, p. 183. In GS, Order Relating to Excise on Assets and Services (Gaza Strip) (No. 535), 1976, Proclamation, Orders and Appointments (Gaza Strip), Issue No. 39, 15/09/1977, p. 3377.

[154] Palestine Official Gazette, Issue no. 53, 28/02/2005, p. 122.

[155] For more on the implementation of the EU-Med Agreements see, GASIOREK Michael, 'Report on the Situation of Customs, Taxation and Rules of Origin in the Countries of the Mediterranean Area'. In: MONJO Eduardo (ed.) Regional Program for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed market) (Maastricht: European Institute of Public Administration, 2004) P. 37.

these transactions or must enact legislation guaranteeing the full convertibility of Palestine's current account in accordance with its legal jurisdiction under the Interim Agreement with Israel. The legal status of current transactions in the WBGS under occupation was totally determined by the ICA which administered it in cooperation with the Israeli Ministry of Trade, the Israeli Ministry of Finance and the Bank of Israel. The ICA introduced Israeli currency to operate with the JD in the WB via Military Order No. 76 of 1967 Instituting Israeli Currency as Legal Tender[156] and replaced the Egyptian Pound in the GS with Israeli currency as the sole legal tender via Military Order No. 40 of 1967 Order Relating to Israeli Currency".[157] The ICA restricted all current payments transactions with the occupied Palestinian Territories.[158] For example, it made all visible and invisible transactions subject to a strict licensing system and imposed high charges on them.[159]

As a result of the Interim Agreement, the PA took responsibility for financial policy in the WBGS but on a partial rather than comprehensive basis. For example, the PMA has limited powers regarding exchange arrangements but has full authority over banking operations. The Paris Protocol did not authorize the PA to introduce a Palestinian currency, which means that the New Israeli Sheqel, the Jordanian dinar[160] and the US dollar serve as three legal tenders and means of payment for all purposes, including official transactions in the WBGS. Any circulating currency will be accepted by the PA and by all its institutions, local authorities and banks, when offered as means of payment for any transaction. Accordingly, the use of three currencies instead of one domestic currency made it difficult for the PMA to define and influence overall monetary policy in the WBGS. Most of the conventional indirect monetary instruments are not available to the PMA, especially control over the domestic money supply. The main indirect instruments currently available to the PMA are related to reserve requirements.[161]

With regard to resident and non-resident accounts, exports and export proceeds, and payments and proceeds from invisible transactions and current transfers, the PMA has assumed full powers and responsibility for all these transactions. The PMA has fully liberalized all payments and transfers

[156] Proclamation, Orders and Appointments (West Bank), Issue no. 5, 15/11/1967, p. 191.
[157] Proclamation, Orders and Appointments (Gaza Strip), Issue no. 2, 01/11/1967, p. 121.
[158] EINBLATT A., 'Sovereignty and Economic Development: The Case of Israel and Palestine', The Economic Journal, No. 111, June 2001, p. 292.
[159] Military Order on Charges on Foreign Currency Credit No. 1225 of 1987 in the WB, Proclamation, Orders and Appointments (West Bank), Issue no. 76, 12/09/1990, p. 167. And Military Order No. 928 of 1987 in the GS, Proclamation, Orders and Appointments (Gaza Strip), Issue no. 83, 25/09/1989, p. 8925.
[160] Article 1 of the Palestinian-Jordanian Agreement regarding Cooperation on Banking and Monetary Issues. Jordan Gazette, Issue no. 4028, 01/03/1995, p. 588.
[161] BARNETT S., 'Monetary Policy in the West Bank and Gaza Strip in the Absence of a Domestic Currency'. In: KANAAN O. and others, The Economy of the West Bank and Gaza Strip: Recent Experience, Prospects, and Challenges to Private Sector Developments (Washington DC: IMF, 1998) p. 29.

for current international transactions. For example, the PMA has lifted all restrictions enforced by the Bank of Israel on banking operations, including residents and non-residents accounts. Today, resident and non-residents can easily open accounts in any currency without any limitations on the amounts that can be credited, debited or on the purpose of such accounts.[162] Furthermore, residents and non-residents have the right to transfer without limitations any amounts they need to carry out any visible or invisible transactions.[163]

Although the PA has liberalized all current transactions under its jurisdiction in a manner compatible with the EU-PLO, the most important characteristic of that process is that it was achieved in practice and not by a legislative act. Legal current account convertibility can be only achieved through foreign exchange regulations[164] that liberalize exchange arrangements, residents and non-residents accounts, visible and invisible transactions and proceeds for invisible transactions and current transfers. The liberalization of these transactions will give residents and non-residents the complete right to buy, sell and transfer national and foreign currencies in order to conclude any international current transaction. **Therefore, to fulfill its legal obligations towards the EU-PLO's free trade area, Palestine must enact a foreign exchange regulation translating the virtual current convertibility to legal current convertibility.**

Capital movements

The EU-PLO did not stipulate full capital account convertibility, only that the FDI relating to EU companies established in Palestine be free of all restrictions. Full capital account convertibility means fundamental changes to the Palestinian legal system. Changes would comprise, for example, company law, banking law, financial markets law, insurance law, immovable property law and foreign exchange regulation. However, since the EU-PLO only requires the liberalization of FDI and all transactions connected to it, the obligation of Palestine is confined to these parameters. In 1998, the PA fulfilled this obligation in the Law on the Encouragement of Investment in Palestine No. 1 of 1998 (Investment Law)[165],

[162] ZAVADJIL M. and others, Recent Economic Developments, Prospects, and Progress in Institution Building in the West Bank and Gaza Strip (Washington DC: IMF, 1997) p. 27.

[163] VON ALLMEN U. and FISCHER F., 'The Choice of Future Exchange Rate Regime in the West Bank and Gaza'. In: VALDIVIESO R. and others (eds.), West Bank and Gaza: Economic Performance, Prospects, and Policies (Washington DC: IMF, 2001) p.112.

[164] For example, the Foreign Exchange Regulations of 1997. Jordan Gazette, Issue no. 4219, 16/07/1997, which liberalizes all current payments in Jordan.

[165] Palestine Official Gazette, Issue no. 23, 08/06/1998, p. 5. This Law replaced the Investment Promotion Law, No. 6 of 1995, Palestine Official Gazette, Issue no. 5, 05/06/1995, p. 6. The PA enacted this law in close cooperation and coordination with many international organizations, especially the IMF. For more see, KANAAN O., 'The Peace Process, Uncertainty and Private Investment in the West Bank and Gaza Strip', Middle East policy, Vol. VI, no. 2, October 1998, p. 67. FISHER S. and others, 'Economic Developments in the West Bank and Gaza since Oslo', The Economic Journal, No. 111, June 2001, p. 270.

which underlined the free movement of FDI and all transactions connected to it.[166] Article 10 of the Investment Law states:

In compliance with the provision of Article 11 of this law and in accordance with the free market economy, the Palestinian Authority guarantees to all investors the unrestricted right of transferring all their financial resources outside Palestine including the capital, profits, dividends, capital profits, wages, salaries, interests, debt payments, management fees, technical assistance, other fees and compensation money for expropriation, cancellation of licenses, court decisions, arbitration awards and any other form of payments or financial resources. The investor may freely transfer all the financial resources outside Palestine at the rate of exchange in force and prevailing in the market at the time of transfer and in a convertible currency acceptable to the investor.[167]

This Article clearly liberalizes all capital movements connected to FDI. The Investment Law did not define the meaning of "financial resources", but indicates that it includes the principal capital, cash and assets, and all capital connected to the investment such as profits, dividends, wages, salaries, interests, debt payments and other transactions numerated in the Article. The World Bank Investment Guide's definition of financial resources includes the wages and savings of expatriate personnel, investment profits, interest amounts owed in external debt obligations of the enterprise, amounts needed to satisfy other contractual obligations of the enterprise and investment capital upon liquidation or sale of the investment.[168] **According to the obligations of the EU-PLO free trade area, Palestine is in full compliance with its capital account obligation.**

2.3. Competition rules

The EU-PLO requires Palestine to adopt a competition law consistent with EU competition policy stipulated in the EC Treaty. Currently, the Palestinian regulatory structure governing competition rules in the WB is inherited from Jordan while that applicable in GS is inherited from the British Mandate. There is not a single act of legislation in Palestine that specifically carries a title relating to competition, anti-monopoly, anti-competitive or illegal practices.

[166] The PA enacted this law in close cooperation and coordination with many international organizations, especially the IMF. For more see, KANAAN O., 'The Peace Process, Uncertainty and Private Investment in the West Bank and Gaza Strip', Middle East policy, Vol. VI, no. 2, October 1998, p. 67. MOLKNER and ABDUL-HAMID R., The Legal Structure of Foreign Investment in the West Bank and Gaza Strip (Jerusalem: Israeli-Palestinian Center for Research and Information (IPCRI), 1994).

[167] The author's translation.

[168] Fidler concluded that this article contradicts the World Bank Investment Guide but this is incorrect. FIDLER D., 'Foreign Private Investment in Palestine Revisited: An Analysis of the Revised Palestinian Investment Law', Case Western Reserve Journal of International Law, Vol. 31, no. 1-3, 1999, p. 293

The rules on competition in the current Palestinian legal system are scattered throughout different laws. For example, Articles 433-437 of the Jordanian Penal Code No. 16 of 1960, which is valid in the WB, stipulates that any person tampering with prices by raising or lowering them to affect supply and demand in the market shall be imprisoned for a maximum of one year and fined 100 Jordanian dinars.[169] Another example is Article 47 of the Jordanian Commercial Code No. 12 of 1966[170], also applicable in the WB that stipulates that traders who unlawfully use the merchandize mark or trade mark of another will be either imprisoned for a period of three months to one year or fined a minimum of 50 JD and maximum of 200 JD. These articles are old and are incompatible with the new commercial reality where competition crime has become far more complex than raising or lowering prices or using a trade mark. Competition crimes today include, for example, price fixing and limiting or controlling production, markets, technical development, or even investment.[171]

Since existing laws are incompatible with the new commercial realities and with the legal requirements of the EU-PLO, Palestine has drafted a new Competition Law. It aims to prohibit uncompetitive practices and behavior and provide a free trade environment in services and goods. The draft Competition Law bans any agreements or arrangements the real or anticipated result of which would significantly prevent, restrict or weaken competition. Many activities are prohibited to prevent monopoly practices in goods or services or limit competition, for example any agreement between producers to fix a sale price for similar products or to divide the Palestinian market into specific geographic areas where sales are limited by area. Other examples include discrimination between clients in similar contracts, specifying a resale price, forcing a client to cease dealings with a competitor, refusing to deal with a particular client or to provide ordinary trade terms for a producer, and imposing a condition on the resale or export of products.

This draft law represents a big departure from existing legislation on competition but still fails to meet the best international standards in its current form. The draft law does not create an independent competition authority, which undermines its proper implementation in the future. As a result, it is important that the draft law be reconsidered and amended before it is too late.

---

[169] Jordan Gazette, Issue No. 1487, 01/05/1960, p. 374.

[170] Jordan Gazette, Issue No. 1910, 30/03/1966, p. 469.

[171] For more on the implementation of the EU-Med Agreements see, NICOLAIDES Phedon, 'Competition Policy: A Review of Competition and Liberalization Measures in the MEDA Countries'. In: MONJO Eduardo (ed.) Regional Program for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed market) (Maastricht: European Institute of Public Administration, 2004) P. 201.

It has been argued that in reality Palestinian trade does not need a competition law since there are few monopolies or economic blocs that prevent competition, combined with the fact that the Palestinian market is small and Palestinian firms are very family-oriented.[172] Yet, there are several justifications for a competition law in light of the increased obstacles to investment in the Palestinian Territories. For example, although Article 21 of the Palestinian Basic Law adopts a market economy philosophy based on the private sector as the driving force, there has been a trend by the PA to keep some economic sectors or products under government control. This includes the PA monopoly of petroleum and tobacco. Or, particular enterprises are given exclusive right over certain services or products, such as the exclusive right of some companies to import cement and cigarettes and the monopoly of the Palestinian Telecommunications Company over the telecommunications sector.

A survey conducted by the World Bank concerning the relative order of investment determinants in the Palestinian Territories and their international counterparts, found that 77 percent of investors considered political stability important or very important in hindering foreign investment, while 71 percent of investors cited corruption and uncompetitive behavior by public institutions. Another survey conducted by the Center for Private Sector Development on private sector satisfaction with government performance, particularly in trade, found that 91 percent of those questioned said that they viewed governmental monopoly establishments with serious dissatisfaction.

The prolonged process of the draft competition law is the result of the current difficult political circumstances in the Palestinian territories. However, the regulation of the Palestinian economy in the light of the new global trade system requires a prompt, comprehensive range of economic legislation, including an effective competition law outlining the rights and obligations of the private sector. **Therefore, a Palestinian competition law is an important pre-requisite for the accomplishment of a free trade area with the EU as provided by the EU-PLO.**

2.4. Intellectual property rights

For the purpose of the Agreement, intellectual, industrial and commercial property comprises copyright, including the copyright in computer programmes, and related rights; patents; industrial designs; geographical indications, including appellations of origin; trademarks and service marks; topographies

[172] Interviews with Mr. Tahseen Alawneh, member of the Social Committee of the Palestinian Legislative Council and Dr. Basem Mkahwal, researcher at the Palestine Economic Policy Research Institute (MAS), September 2004.

of integrated circuits; and protection against unfair competition as referred to in Article 10 bis of the Paris Convention for the Protection of Industrial Property (Stockholm Act, 1967) and protection of undisclosed information on "know-how". These topics are usually governed by the following laws:

- Law on Standards and Metrology
- Trademarks Law
- Patents Law
- Models and Industrial Designs Law
- Integrated Circuits Law
- Plant Variety Protection Law
- Copyrights Law
- Trade Secrets

Accordingly, full and fair implementation of the EU-PLO on intellectual property rights requires the enactment of the aforementioned laws with legislation that conforms to the best international and European legal practices and norms. To assess the compatibility of the current Palestinian legal system with the obligations of the EU-PLO requires a review of the laws in force in the WBGS.[173] The legal system prevailing in GS contains the following laws regarding intellectual property rights: the Copyright Ordinance of 1924[174], which covers the rights of authors under the English Copyright Law of 1911, as promulgated by British Royal Decree. The Merchandise Marks Ordinance of 1929,[175] and Trade Marks Ordinance of 1938[176] cover all procedures relating to commercial trademarks, including commercial trademarks registered abroad. The Invention Privileges and Fees Law of 1925[177] covers the granting of privileges to new inventions and registration, and complies with the international treaty regarding industrial property. This law covers most of the aspects and procedures relating to intellectual property.

In the WB, the Merchandise Marks Law No. 19 of 1952[178] and Trade Marks Law No. 33 of 1952[179] cover most issues relating to trademarks and relevant procedures. The Commercial Law No. 22 of 1966[180] forbids and provides penalties for the unlawful use of patents and designs, while the Jordanian Law for Invention Privileges and Fees No 22 of 1953[181] covers

[173] For more on the implementation of the EU-Med Agreements see, HONRADO Filipe, 'Comparative Study of Answers to Questionnaires Supplied by the Mediterranean Partners Workshop on Intellectual Property Rights'. In: MONJO Eduardo (ed.) Regional Program for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed market) (Maastricht: European Institute of Public Administration, 2004) P. 119.
[174] Laws of Palestine (Drayton Collection), 1934, Chapter 25, p. 435.
[175] Laws of Palestine (Drayton Collection), 1934, Chapter 91, p. 1039.
[176] Palestine Official Gazette, No. 843, 24/01/1938, p. 126.
[177] Laws of Palestine (Drayton Collection), 1934, Chapter 105, p. 1233.
[178] Jordanian Official Gazette, No. 1131, 17/10/1953, p. 486.
[179] Jordanian Official Gazette, No. 1110, 01/06/1952, p. 243.
[180] Jordanian Official Gazette, No. 1910, 30/03/1966, p. 469.
[181] Jordanian Official Gazette, No. 1131, 17/01/1953, p. 491.

all procedures relating to patent protection, registration, conditions and specifications. As is the case with regulations on economic matters, intellectual property regulations in force in Palestine are old, complex and incompatible with the best international practices and norms demanded by the EU-PLO. Therefore, the presence of an effective legal system to protect intellectual property is a significant requirement in the implementation of the EU-PLO. The free trade area with the EU requires rules on intellectual property rights that grant inventors, innovators, and authors the right to make active use of their inventions and intellectual property while penalizing those who imitate them in the country of origin or internationally. If intellectual property regulations are absent or weak, it deters the publication of new work, reduces investment in the development of new inventions, and thereby deprives society of benefiting from them and from opportunities for economic development.

In recognition of the importance of intellectual property protection and international development in this field, the PA has proposed two draft laws. The first is the draft Industrial Property Protection Law, which consists of several sections; patent rights, design, integrated circuits, undisclosed information, trademarks, geographical indicators, industrial models, and drawings. The second is the Copyright and Related Rights Law, which consists of eight sections and 72 articles. It regulates names, terms, nature of copyright, and the period of ownership of rights during which authors' material rights are protected, ownership of related rights, regulating procedures, penalties and violations, the Palestinian organization for copyright, and other general rules.[182] These two Laws have not yet been adopted by the PLC. **Accordingly, regulations on intellectual property rights are an immediate requirement for the sound implementation of the EU-PLO.**

2.5. Public procurements

The EU-PLO requires the PA to gradually liberalize its public procurement contracts by opening up as many of these contracts as possible to international competition and not to favor domestic suppliers over foreign competitors. This means that the PA must regulate government procurement in accordance with best international practices based on the principles of transparency, non-discrimination and fair competition. The legislation relating to public procurement contracts in the WB was the Public Procurement Regulation No. 87 of 1965[183] and in the GS was Decision on Public Procurement for Municipalities No. 10 of 1965[184], and Decision on Public Procurement for Local Councils

[182] Interview with Mr. Basim Makhool and Naser Atyani, legal researchers in the Palestine Economic Policy Research Institute - MAS September 2004..
[183] Jordanian Official Gazette, No. 1863, 08/01/1965, p. 1185.
[184] Palestine Official Gazette (Egyptian Administration), Issue No.305, 01/03/1966, p. 5.

No. 3 of 1967.[185] These regulations were old and incompatible with modern principles. For example, the Public Procurement Regulation No. 87 of 1965 gave the Minister the right to buy his Ministry needs without a tender[186], while those in force in the GS confined public procurement to municipalities and local councils, thereby excluding government ministries and departments.

In order to comply with the EU-PLO, the PA has enacted new regulations covering public procurements in Palestine, namely the General Supplies Law No. 9 of 1998[187] and Public Works Law No. 6 of 1999. The objective of these laws is to regulate public purchase in Palestine in a manner compatible with best practices and norms. Among other things, this legislation establishes a public procurement department responsible for defining Palestinian public procurement policy, determining the conditions for public procurement purchase and its methods and, most importantly, regulating tenders.[188]

An overall evaluation of these two laws reveals that they do not fully comply with best international practices and norms. For example, tenders, in principle, must be transparent and must not protect domestic products or suppliers or discriminate against foreign products or suppliers. The provisions on tenders in the General Supplies Law discriminate against foreign products by giving priority to domestic products and suppliers.[189] Furthermore, it does not define how public procurement should be concluded and gives the Council of Ministers the right to determine the procedures, rules, and conditions of each tender.[190] This approach contradicts the principle of transparency. Governments are required to put in place domestic procedures by which aggrieved private bidders can challenge procurement decisions and obtain redress in the event that decisions were made in a manner inconsistent with the law. The General Supplies Law runs counter to this principle by giving the Council of Ministers the final say regarding any objections or challenges regarding its implementation.[191] It must therefore be concluded that in order to fulfill it obligations in the EU-PLO, **the PA must amend the General Procurement Law in a manner compatible with the general requirements of the Association Agreement.**

---

[185] Palestine Official Gazette (Egyptian Administration), Issue No. 264, 01/05/1962, p. 5.
[186] Article 21 of the Regulation.
[187] Palestine Official Gazette, Issue No. 26, 26/11/1998, p. 28. It consists of 55 Articles.
[188] For more on the implementation of the EU-Med Agreements see, MOREAU Olivier, 'Comparative Study of the Regulation of Public Procurement in the Mediterranean Partners and in Four EU Member States'. In: MONJO Eduardo (ed.) Regional Program for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed market) (Maastricht: European Institute of Public Administration, 2004) p. 119.
[189] Article 9 of the General Procurement Law.
[190] Article 19 of the General Procurement Law.
[191] Article 53 of the General Procurement Law.

The EMP left the means of achieving a free movement of services, establishment and capital in the hands of the Association Council established by the association agreements with the Mediterranean countries. No specific language is devoted to this subject and no timetable or target date is stated for the realization of this objective. The EMP refers the organization and regulation of the right of establishment and services to the obligations of each country established under the GATS. Obligations under the GATS do not imply much, if any, liberalization. Middle Eastern and North African countries made very limited commitments under the GATS and less than 10 percent of their service sector operates according to national treatment or market access principles. The EMP does not, therefore, play an active role in the liberalization of the right of establishment and the free movement of services in the Mediterranean countries.[192]

With regard to capital movements, the EMP's objective is to fully liberalize all current payments between the EU and Mediterranean countries and gradually liberalize all capital transactions, although no timetable was established. The EMP has liberalized all current payments but not capital movements. The EMP with Tunisia, Algeria, Morocco and Egypt only requires the liberalization of capital movements related to direct foreign investment in these countries by EU firms in companies formed in accordance with current laws and income that can be liquidated or repatriated. The EMP with Jordan liberalizes all capital movements from the EU to Jordan and all direct foreign investment from Jordan to the EU. The outflow of capital from Jordan to the EU is subject to relevant local laws. Meanwhile, the EMP with Lebanon and Israel liberalized all capital movements between themselves and the EU.[193] For the liberalization of capital movements, a comprehensive revision of regulations related to exchange arrangements, banking, insurance, capital markets and real estate is essential for a proper transition to a single market.

Although the EMP association agreements do little to liberalize services and capital between the EU and the Mediterranean, the EU-PLO Association Agreement did not, unlike the association agreements with Israel and Lebanon,

[192] HOEKMAN, Bernard and DJANKOV Simeon, 'Effective Protection and Investment Incentives in Egypt and Jordan During the Transition to Free Trade with Europe', World Development, Vol. 25, No.2 1997, p. 288. HAKURA F., EU-Mediterranean and Gulf Trade Agreements (Bembridge: Palladian Law Publishing Ltd., 1999) p. 42. CREMONA M., 'Free Movement of Persons and Services in the Wider Europe'. In: XUEREB P. (ed.), The European Union and the Mediterranean: Closer Relations in the Wider Context (Malta: European Documentation and Research Centre, 1998) p. 114.

[193] NSOULI S. and RACHED M., 'Capital Account Liberalization in the Southern Mediterranean Region', IMF Paper on Policy Analysis and Assessment, September 1998, p. 8.

include the right of establishment and services at all and its provisions on capital did not go far enough towards its liberalization obligations. This means that the EU-PLO has, in principle, excluded the free movement of services, establishment and capital from the scope of the free trade area between the EU and Palestine. In comparison with other EMPs, the contracting parties have referred their services and establishment relations to their commitments under the GATS. For example, Article 32 of the EU-Tunisia Association Agreement stipulates that:[194]

1. At the outset, each of the Parties shall reaffirm its obligations under the GATS, particularly the obligation to grant reciprocal most-favored-nation treatment in the service sectors covered by that obligation.
2. In accordance with the GATS, such treatment shall not apply to:
(a) advantages granted by either Party under the terms of an agreement of the type defined in Article V of the GATS or to measures taken on the basis of such an agreement;
(b) other advantages granted in accordance with the list of exemptions from most-favored-nation treatment annexed by either Party to the GATS.

This Article refers issues relating to services and establishments in the EU-Tunisia to both parties' commitments under the GATS. Some other EMPs have tried to regulate the free movement of cross-border trade and the right of establishment in the association agreements. For example, the EU-JAA regulated the right of establishment and services in Articles 30-47.[195] With regard to the right of establishment, the EU-JAA states that the EU and Jordan should grant each other's companies, subsidiaries and branches treatment no less favorable than that accorded to like companies of any third country, except air transport, inland waterways transport and maritime transport. In other words, this Article grants the enterprises of both countries most-favored-nation treatment, apart from enterprises working in transportation, meaning that Jordan or the EU must treat each others' enterprises identically to enterprises from other countries. It also states that both EU and Jordanian companies have the right to employ their own nationals in their companies working in either the EU or Jordan.

The EU and Jordan should do their utmost to progressively allow the supply of services by Community or Jordanian companies established in the territory of a party other than that of the person for whom the services are intended, taking into account the development of the services sectors in the parties. The language of this Article was not as strong as that used on the right of establishment and Jordan and the EU are not obliged to open their services'

[194] Official Journal L 097, 30/03/1998 p.2 –183.
[195] Official Journal L 129 , 15/05/2002 p.3 – 176.

markets to cross-border supply of services coming from one of them. The level of liberalization depends on the level of development of the services sectors in the other country. This clause intends to protect the EU advanced services market from the entry of weak and incompetent Jordanian companies which might jeopardize the security and strength of EU markets. The Association Council should make recommendations to develop the right of establishment and services into an economic integration agreement as defined in Article V of the GATS, at the latest five years from the entry into force of the EU-JAA.[196]

Some might suggest that the EU-PLO did not refer the Palestinian-EU relationship on services and establishments to the GATS because Palestine is not a member of the World Trade Organization (WTO). This suggestion is flawed since the EU-LAA referred the EU services and establishment's obligations with Lebanon, which is not a WTO member, to their commitments under the GATS. The EU applied the obligations on member states to the GATS in Lebanon because the latter is in the process of finalizing its accession to the WTO. Therefore, Article 30 states that;

Treatment granted by either Party to the other with respect to right of establishment and supply of services shall be based on each parties' commitments and other obligations under the General Agreement on Trade in Services (GATS). This provision shall take effect from the date of the final accession of Lebanon to the WTO.

In addition to the fact that Palestine is not a WTO member, the EU-PLO Association Agreement did not regulate the right of establishment and cross-border supply of services because of its interim nature. The EU-PLO is an interim agreement to be replaced by a Euro-Mediterranean Association Agreement as soon as conditions permit. The agreement with the PLO was an interim one due to the fact that the PA faced a transitional period under the Oslo Agreement. The parties to the agreement envisaged that the Oslo Agreement would lead to a Palestinian state by summer 1999 and the interim agreement would then be replaced by another agreement similar to those signed with other Mediterranean countries. In my opinion, the EU intended to postpone the regulation of these two rights until a permanent association agreement with the Palestinian state could be signed. A permanent association agreement must be negotiated for the establishment of a full free trade area that includes the free movement of services and establishments. The Oslo process has collapsed and the EU-PLO remains an interim agreement.

[196] Article 40 of the EU-JAA.

The ENP has completed what was missing in the EMP and goes a step further in EU-Mediterranean relations. The ENP sets ambitious objectives for partnership with neighboring countries based on strong commitments to shared values and political, economic and institutional reforms. Partner countries are invited to enter into closer political, economic and cultural relations with the EU, to enhance cross border co-operation and to share responsibility in conflict prevention and resolution. In return for concrete progress demonstrating shared values and the effective implementation of political, economic and institutional reforms, the EU's neighbors should benefit from the prospect of closer economic integration with the EU. Specifically, all neighboring countries should be offered the prospect of a stake in the EU internal market and further integration and liberalization to promote the free movement of persons, goods, services and capital. If a country has reached this level, it has come as close to the EU as it can be without being a member. The EU should therefore be ready to work in close partnership with neighboring countries who wish to implement further reforms and assist in building their capacity to benefit from the EU experience.[197]

The European Community Treaty[198] defined the internal market in Article 14 as follows:

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.[199]

Accordingly, the intentions of Mediterranean countries to join the internal market require the free movement of goods, persons, services and capital with the EU member states. The free movement of goods has been partially achieved by the EMP association agreements with the Mediterranean countries, while that of persons, services and capital has yet to be formalized. The free movement of persons means the right to move from one country to another freely and without conditions. The ENP outlines a strict and limited system for the free movement of persons and depends on relaxing the EU visa system (open-visa system) towards a particular category of people, businessmen for example.[200] This right is outside the framework of this study.

---

[197] COM (2003) 104 final. Wider Europe, Neighborhood: A New Framework for Relations with our Eastern and Southern Neighbors

[198] The EC Treaty was signed in Maastricht and entered into force on November 1, 1993.

[199] For more see, EHLERMANN C., 'The Internal Market Following the Single European Act', Common Market Law Review, Vol 24, 1987, FORWOOD N., and CLOUGH M., 'The Single European Act and Free Movement: Legal Implications of the Provisions for the Completion of the Internal Market', European Law Review, December 1986.

[200] COM (2003) 104 final. Wider Europe, Neighborhood: A New Framework for Relations with our Eastern and Southern Neighbors

The right to provide services means the right to engage in direct foreign investment in the partner country and the right to engage in cross-border trade transactions in services without any restrictions. The liberalization of trade in services and establishments with the EU requires comprehensive legislative reform in the country concerned in the fields of business and professional services, communication services, construction and related services, distribution services, educational services, energy services, environmental services, financial services, health and social services, tourism services and transport services. Since discussion of all these services would require an independent research, this study will deal with the liberalization of financial services as an example of what the Palestinian Authority needs to do if it intends to benefit from the EU internal market. We have chosen the right to provide financial services because it is directly linked to the liberalization of capital movements. This link has been recognized by the EU in Article 51 of the EC Treaty which stipulates:

the liberalization of banking and insurance services connected with movements of capital should be effected in step with the liberalization of capital movements.

While the EMP requires and organizes the liberalization of the free movement of goods and current payments, the ENP calls in addition for the liberalization of services and capital. The EU has referred its services relationship with third countries to its commitments under the GATS, which does not require full liberalization. However, since the ENP opens the door for the Mediterranean countries to join the internal market, the level of liberalization would be that of the internal market rather than that related to the GATS. In order to understand the meaning and level of liberalization required by the Mediterranean countries, we will discuss the right to provide services with third countries and within the internal market, concentrating on financial services to grasp the differences. We will then address the liberalization of capital and financial services in Palestine and its compatibility with EU requirements.

1. The liberalization of capital and financial services in the European Union

First of all, freedom of establishment is usually considered an important part of the freedom to provide services and, therefore, no distinction has been made between them. For example, the General Agreement on Trade in Services (GATS) did not distinguish between services and establishments. The EC Treaty adopted an unusual approach by dealing with the right of establishment in an independent chapter from that of services.[201] The EC Treaty did not define the meaning of services and establishments and the Council did not recognize any

[201] MAESTRIPIERI C., 'Freedom of Establishment and Freedom to Supply Financial Services', Common Market Law Review, Vol. 10, 1973, p. 150.

distinction when it drafted the directives required for their implementation.[202] For example, Directive 2000/12 relating to the taking up and pursuit of business by credit institutions dealt with them together under one title. [203]

The liberalization of capital in the EU has progressed parallel to the liberalization of financial services. Up until 1988, the EU did not put pressure on member states to liberalize financial services because they are directly connected to the liberalization of capital. This close connection was articulated in the Treaty Establishing the European Community (EC Treaty), Article 51(2) cited above. As a result of the Single European Act, member states started to take concrete measures to liberalize capital movements and financial services.

The liberalization of capital movements and financial services in the EU took two different approaches. The approach adopted within the internal market was totally different from that adopted with regard to third countries. We will first discuss the liberalization of financial services and secondly, the liberalization of capital movements in the EU.

1.1. The liberalization of financial services in the European Union

On the basis of the principles laid down in the EC Treaty, the EC Council has generally adopted the "minimum harmonization approach" towards the achievement of an EU internal market in services. This approach is based on the idea that the national laws of each member state should reflect minimum common policy objectives and a minimum common level of standards accepted by all other members. To the extent that this condition could be achieved, freedom of services within the framework of the EU has been organized based upon the single license principle.

The EU has left the task of regulating the relations of financial services with third countries to the Council, who may organize it in accordance with the interests of the Community and its member states. The Council embraced the GATS as the agreement to regulate relations on financial services with third countries. The relationship with third countries raised several problems, including the problem of competence and supremacy between the Council (and EU law) and member states (and their national law) and the problem of compatibility with the EC Treaty.

[202] HANSEN J., Full Circle: 'Is there a Difference between the Freedom of Establishment and the Freedom to Provide Financial Services', European Business Law Review, Vol. 11, No. 2, 2000, p. 83.
[203] Directive 2000/12/EC of the European Parliament and Council of March 20, 2000. OJ L 126, 26/05/2000, 59.

1.1.1. The liberalization of services in the internal market

Although the liberalization of financial services was one of the main objectives of the original Treaty of Rome, the Community took only a few basic steps towards the creation of an internal market in financial services. From 1957 until the adoption of the Single European Act in 1986, the Council enacted only a few directives harmonizing the different rules covering the free movement of services and establishments in the field of financial services. It appeared that the development of a consensus within the Council to obtain the adoption of the necessary directives was very difficult during that period. One reason may have been that the liberalization of financial services was directly connected with the very complex process of liberalizing capital movements.[204]

With the development of EU economic and monetary policy, the Commission set the ambitious goal of establishing an internal market among its members by 1992 in its White Paper Completing the Internal Market.[205] The Single European Act[206] defined the internal market in Article 8(a) as:

> an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the EEC Treaty.[207]

This was the first initiative aimed at the establishment of the EU internal market and it launched a comprehensive package designed for the creation of a European financial area.[208]

The adoption of an amendment to the Listing Particulars Directive (LPD) in 1987[209] and the adoption of the Second Banking Directive in 1989[210], marked the beginning of the "new approach" to European economic integration in the field of financial services and markets based on the concept of minimum harmonization of the EU member states' substantive laws.[211]

---

[204] For more see: LANDSMEER A., 'Movement of Capital and Other Freedoms', Legal Issues of Economic Integration, Vol. 28/1, 2001, p. 60. This special relationship reflected itself clearly in the nomenclature of Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ L 178 , 08/07/1988). In this, Annex I considers many transactions constituting the main pillars of the right of establishments and the freedom to provide financial services as capital movements, e.g., all transactions in regard to the acquisition by non-residents of shares and bonds in domestic companies and all the transactions numerated under the title of "direct investment". Communication of the Commission on certain legal aspects concerning intra-EU investment, on 19/7/1997, Official Journal C 22/15.

[205] White Paper from the Commission to the European Council on June 14, 1985, COM (85) 310 final.

[206] The Single European Act (SEA) was signed in Luxembourg and The Hague and entered into force on July 1, 1987.

[207] For further details, see, EHLERMANN C., 'The Internal Market Following the Single European Act', Common Market Law Review, Vol. 24, 1987. FORWOOD N., and CLOUGH M., 'The Single European Act and Free Movement: Legal Implications of the Provisions for the Completion of the Internal Market', European Law Review, December 1986.

[208] Communication from the Commission to the Council for the creation of a European financial area on November 4, 198, COM (87) 550 final.

[209] Council Directive 87/345/EEC of 22 June 1987 amending Directive 80/390/EEC coordinating the requirements for the drawing-up, scrutiny and distribution of the particulars to be published for the admission of securities to official stock exchange listing. Official Journal L 185 , 04/07/1987 P. 81 – 83.

[210] Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC. Official Journal L 386 , 30/12/1989 P. 1 – 13. The elements of this directive have been integrated in the Consolidated Banking Directive (see Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions. Official Journal L 126 , 26/05/2000 P. 1 – 59).

[211] Commission Interpretive Communication, freedom to provide services and the interest of general good in the Second Banking Directive, SEC (97) 1193 final on June 20, 1997. See also, DOUGAN M., 'Minimum Harmonization and the Internal Market', Common Market Law Review, Vol. 37, 2000, p. 869.

This "new approach" to integration implicitly reflected certain conclusions reached by the European Court of Justice (ECJ) with respect to the Community's internal market. The most important judgment was that of Cassis de Dijon[212], in which the ECJ concluded that each member state, by agreeing to the negative covenants that create the four freedoms (free movement of goods, persons, services and capital) established by the EC Treaty, implicitly recognized the adequacy of the laws of each of the (other) member states regarding these freedoms, reserving to itself the right to restrict such free movement only where explicitly permitted in the EC Treaty or where justified for the general good. In this case, the notion of general good was used by the ECJ to justify the application of national law by member state on cases with a Community dimension in the absence of common rules.[213] The ECJ gradually extended the scope of the notion of general good from the free movement of goods to cover the freedom to provide financial services in the German insurance case[214], then the freedom of establishment in the Vlassopoulou case[215], and finally to include all aspects of the Treaty of Rome in the Gebhard case.[216]

However, the notion of general good has not been considered as absolute: national measures liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty must fulfill certain conditions.[217] These conditions are: (i) they must be applied in a non-discriminatory manner; (ii) they must be justified by imperative requirements for the general good; (iii) they must be suitable for securing the attainment of the objective that they pursue; (iv) they must not go beyond what is necessary in order to attain it; (v) they must not touch upon areas already harmonized by EU legislation. After the adoption of the Second Banking Directive, the same approach has been used in several other domains of financial law, e.g. the field of investment services[218], undertakings for collective investment in transferable securities[219], etc.

---

[212] Rewe v. Bundesmonopolverwaltung fur Branntwein case 120/78, 20/02/1979, ECR 1979, 649.

[213] For more see, TISON M., 'What is "General Good" in EU Financial Service Law?', Legal Issues of Economic Integration, 1997/2, pp. 1-46.

[214] Case 205/84, 4/12/1986, ECR 1986, 3755.

[215] Case 304/89, 7/05/1991, ECR 1991, I-2357.

[216] Case 55/94, 30/11/1995, ECR 1995, P. I-4165.

[217] HATZOPOULOS V., 'Recent Developments of the Case Law of the ECJ in the Field of Services', Common Market Law Review, Vol. 37, 2000, p. 77

[218] See Council Directive 93/22/EEC of 10 May 1993 on investment services in securities, Official Journal L 0022 of 11.02.2003.
The preamble of this Directive leaves no doubt that the system adopted by the Council regarding investment services was directly inspired by the second banking directive : "Whereas in order to guarantee fair competition, it must be ensured that investment firms that are not credit institutions have the same freedom to create branches and provide services across frontiers as is provided for by the Second Council Directive (89/646/EEC) of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions."

[219] Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (85/611/EEC) (Official Journal L 375, 31.12.1985, p. 3).

The new EU approach, inspired by the jurisprudence cited above, is based on the reasoning that legislative instruments extending mutual recognition to new fields include provisions requiring the national laws of each member state to reflect minimum common policy objectives and a minimum common level of standards safeguarding the financial (law) system. Minimal harmonization of substantive law requirements has therefore been established to provide the foundation for the liberalization of financial services. As a consequence, financial matters that were traditionally regulated only at national level by individual member states, have gradually become the subject of European rules leading to harmonized legal standards.

The use of these minimum standards has further justified the allocation of responsibility over financial firms and institutions operating within the Community to the "home" country. The argument goes that, in as far as the policy objectives and standards harmonized by directive reflect a requisite minimum common level such that the laws of each of the member states can (should) be deemed adequate by the others (as they are the result of European legislative activity at European level), it becomes less critical which member state executes and administers those laws. As a consequence, for reasons of convenience and enhanced effectiveness, it is deemed possible to allocate executive and administrative responsibility to the home country of a financial firm or institution that has been established in accordance with the law of one member state.

Consequently, Community directives which extend the concept of mutual recognition to new fields, such as the Second Banking Directive and the directives on financial services and markets, also generally include provisions intended to harmonize the substantive laws of the member states in the relevant areas to the extent necessary to provide the foundation for the regime of mutual recognition.[220] The process of establishing minimum standards and rules for financial institutions and services has been used as a tool to create an environment for freedom of financial services to be further constructed.

To complete the internal market in financial services and fulfill its obligations under the EC Treaty, the Commission, with the support and direction of the European Council, launched a second major initiative with a Financial Services Action Plan.[221] This sets out a very ambitious program to eliminate barriers to the achievement of a full and complete integrated market for financial services and markets within the Community. It includes a discussion of the barriers to the free flow of financial services and of previous Commission initiatives to

[220] CORCORAN A. and HART T., 'The Regulation of Cross-Border Financial Services in the EU Internal Market', Colombia Journal of European Law, Spring, 2002, p. 10.

[221] COM (1999) 232, 11/05/99. can be found at the EU official website: http://europa.eu.int/comm/internal_market/en/finances/actionplan/actionen.pdf

eliminate these barriers. While the Action Plan does not include many new proposals, it consolidates discussions concerning legislative proposals that are pending, or under development, to complete the internal market in financial services. The Action Plan proposes the adoption of 42 measures necessary to fully harmonize retail markets, wholesale markets, prudential rules and supervision, and conditions for an optimal single financial market.[222]

The objective of the Action Plan is to harmonize most of the rules on financial services that had previously been left to the competence of EU member states, thereby making them common community rules. As a result, these rules fall outside the principle of the general good that can be applied by member states. To understand the full extent of EU attempts to achieve an internal market in financial services, an example of what the Community has enshrined under the minimum harmonization principle (mutual recognition) is required. The regime of mutual recognition organized with regard to the Community's regulatory framework for banking, securities and insurance services is as follows:

Banking services: The minimum harmonization process in the field of banking services was started by establishing the basic principles of (1) mutual recognition (and/or the single banking license), (2) home country rule and (3) home country control.[223]

Mutual recognition means that every member state recognizes the license (or authorization) of a credit institution granted by another member state (provided that such a license or authorization has been granted under the system of harmonized minimum standards as mentioned earlier in the text). The credit institution consequently operates under a single license, implying that it can expand its activities by establishing branches (without legal personality) or by freely providing services in any other member state without obtaining separate authorization from the host state.[224]

The home country rule implies that a credit institution operates under the rules and regulations of the country which has granted the license, even as regards the services and activities developed in the host countries (i.e. outside the boundaries of the home country that granted the single license).

---

[222] For more on the progress of the implementation of the action plan and its effect on the EU financial services market see: http://europa.eu.int/comm/internal_market/en/finances/actionplan/index.htm#plans

[223] DERMINE J., European Banking in the 1990s, 2nd edition (Oxford: Blackwell Publishers, 1993) p. 22.

[224] STRIVENS R., 'The Liberalization of Banking Services in the Community', Common Market Law Review, Vol. 29, 1992, pp. 283-307. Advocate-general M. TIZZANO of the ECJ has described the principle as follows (see ECJ, 25 March 2004, Case C-442/02; Celex No. 602C0442) : "The directive lays down in particular that only credit institutions authorized by the competent authority of a Member State may engage in the business of taking deposits or other repayable funds from the public (Articles-1, 3 and 4); it also provides that those institutions that are legal persons and meet a series of harmonized requirements-(3) may engage in the banking activities covered by the authorization not only in the State that has authorized them and in which they have their head office but also in any other Member State via a branch without legal personality or by way of the provision of services, in accordance with a system of mutual recognition of authorizations (Article-18)."

The home country control system implies that the quality of banking supervision and this supervision itself is granted to the home country. This implies that every member state is authorized to control the credit institutions operating under its license even for activities and services outside its borders.[225]

The activities of credit institutions subject to mutual recognition are identified in the Consolidated Banking Directive.[226] This Directive is an essential instrument to achieve the single market from the point of view of both the freedom of establishment and the freedom to provide services by credit institutions. It aims to secure sufficient harmonization for the mutual recognition of authorizations and prudential supervision systems, making possible the granting of a single license and the application of the principle of supervision by the home member state. It applies to:

...all undertakings whose business is to receive deposits and other repayable funds from the public and to grant credits for their own account or to an electronic money institution.[227]

The condition necessary for this single license system consists of the creation of a level playing field, i.e. a vast set of minimum standards to be adopted by all member states and resulting in the harmonization of many technical instruments of prudential supervision that had, until then, been under the competence of member states' own laws, such as own funds, solvency ratio, large exposures and supervision of credit institutions.[228] Furthermore, because Europe permits universal banking, the harmonized activities also include the supply by credit institutions of investment services, such as securities brokerage, securities underwriting, and dealing in over-the-counter financial derivatives.[229]

However, the Second Banking Directive contains an escape clause as it allows a (host) member state to subject banking and investment services created in another (home country) member state to the principle of general good. For example, Article 22 of the Directive gives the host state the right to take appropriate measures to prevent or to punish irregularities committed

[225] For a detailed study see, LOMNICKA E., 'The Home Country Control Principle in the Financial Services Directives and the Case Law', European Business Law Review, Vol. 11, No. 9/10, 2000, pp. 324-336.
[226] Directive 2000/12/EC of the European Parliament and Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions. Official Journal L 126 , 26/05/2000 P. 1 – 59.
[227] Directive 2000/28/EC of the European Parliament and Council of 18 September 2000 amending Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions. Official Journal L 275 , 27/10/2000 P. 37 – 38.
[228] NIELSEN P., Services and Establishmenst in European Community Banking Law (Denmark: Association of Danish Lawyers and Economics, 1994) p. 104.
[229] Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field. Official Journal L 141 , 11/06/1993 P. 27 – 46.

within their territories, which would be contrary to the legal rules it has adopted in the interest of the general good. Such measures could include the possibility of preventing offending institutions from initiating any further transactions within their territories.[230]

As each member state has been given the power to make its own list of the legal rules to be considered of general good, the single market for banking services is seriously hindered. It is therefore not surprising that legal scholars have argued that the host state's powers to define the concept of general good are (i) confined to prudential rules which are not sufficiently harmonized, (ii) not attributed specifically to the prudential authority but to the member state in general and (iii) the host state's intervention for reasons of general good may be both repressive and preventive.[231]

Notwithstanding the system created by the Second Banking Directive, the issue of non-discriminatory restrictions to the freedom of financial services is still considered to be subject to the general rule of Article-43 of the EC on the freedom of establishment in general. For example, in the Alpine Investments case[232] it was held that a national regulation prohibiting financial market operators established in the Netherlands from using the telephone, and in particular cold calling, to contact potential customers, either in the national territory or in the territory of other member states and applicable without distinction to national institutions and (the branches of) institutions of other member states, could nevertheless constitute a restriction on the freedom to provide cross-border services in that it deprived the operators concerned of a rapid and direct technique for marketing and for contacting potential clients.

The ECJ, however, has made it clear that in order for a national measure applied without distinction to constitute an obstacle to the freedom to provide services, it must directly affect access to the market in services in the other member states.[233] In his opinion in case C-442/02 quoted earlier, advocate-general TIZZANO held that a national measure, such as the prohibition on remunerating sight accounts in euros, may constitute a restriction on the freedom of establishment prohibited by Article-43 of the EC if its application deprives the subsidiaries of foreign banks of the possibility of competing effectively as regards taking deposits from the public with banks traditionally established in the national territory with an extensive branch network.[234]

[230] For more see, SCHOEMNMAKER D., 'Internationalization of Banking Supervision and Deposit Insurance', Journal of International Banking Law, Vol. 3, 1993, p. 111.
[231] For more, see TISON M., op. cit., p. 34.
[232] Investments BV v. Minister Van Financiën (Case C-384/93), 10 May 1995, [1995] 2 C.M.L.R. 209.
[233] See the Opinion of Advocate-General M. TIZZANO (ECJ, Caixa Bank France v Ministere de l'Economie, des Finances et de l'Industrie (C442/02), 25 March 2004; Celex No. 602C0442).
[234] Opinion, pt. 91.

Securities services: To establish a European capital market, the Council is working to harmonize the rules on securities services. On 28 May, 2001, the Council adopted a Directive on the admission of securities to official stock exchange listing and on information to be published on those securities.[235] The aims of the Directive are to facilitate the admission to the official stock exchange of one member state of securities issued by a company from other member states and the listing of any given securities on a number of stock exchanges in the Community, in addition to ensuring that a minimum level of information is provided to investors. It has been accepted that when a company seeks to have its securities admitted to listing in a host member state, investors operating in that country may be sufficiently protected by receiving only simplified information rather than full listing particulars.

To protect investors, the aforementioned Directive requires that documents intended to be made available to the public must first be sent to the competent authorities in the member state in which the initial admission to the official listing was sought. It is for that member state to decide whether its competent authorities should scrutinize those documents and to determine, if necessary, the nature and manner in which that scrutiny should be carried out. Mutual recognition of listing particulars to be published for the admission of securities to official listing represents an important step forward in the creation of the Community's internal market.

As regards securities admitted to official stock-exchange listing, the protection of investors requires that the latter be supplied with appropriate regular information throughout the entire period during which the securities are listed. Coordination of requirements for this has similar objectives to those envisaged for the listing particulars, namely to improve protection and make it more uniform, to facilitate the listing of these securities on more than one stock exchange in the Community, and in so doing, to contribute towards the establishment of a genuine Community capital market by permitting a fuller interpenetration of securities markets.

Under the Directive, listed companies must make available their annual accounts to investors as soon as possible and a report on the company for the whole of the financial year. Companies should also, at least once during each financial year, make reports on their activities available to investors. By virtue of this Directive, convertible or exchangeable debentures and debentures with warrants may be admitted to official listing only if the related shares are already listed on the same stock exchange or on another

[235] Council Directive 2001/34/EC of May 28, 2001, OJ L 184, 06/07/2001, P. 1. This directive is a codification of the securities directives 79/279/EEC, 80/390/EEC, 82/121/EEC and 88/627/EEC.

regulated, regularly operating, and recognized open market or are so admitted simultaneously.[236]

Nevertheless, Article 8 of the Directive, entitled More Stringent or Additional Conditions and Obligations, authorizes member states to make the admission or the issuers of securities admitted to official listing subject to more stringent obligations than those set out in the Directive or to add additional conditions. Accordingly, member states can create more restrictive rules in order to protect the issuers and the investors in its market so long as this legislation applies generally to all issuers or to individual classes of issuers and that they have been published before application for the admission of such securities is made.[237]

Insurance services: The insurance sector is considered to be delicate for member states because of the specific nature of the service provided by the insurer, which is, by definition, linked to future events uncertain at the time when the contract is concluded and because it is directly linked to issues of protecting consumers, policyholders and/or insured persons.[238] Moreover, insurers are known as institutional investors which, to a large extent, invest their financial reserves in financial instruments, thereby adding to the risk involved with the insurance business.

In order to facilitate the taking-up and pursuit of business in life and non-life assurance, it was considered essential to eliminate certain divergences existing between national supervisory legislation. To achieve this objective and at the same time ensure adequate protection for policyholders and beneficiaries in all member states, it was held that provisions relating to the financial guarantees required of assurance undertakings should be coordinated. It was also considered necessary to complete the internal market in direct life and non-life assurance, from the point of view both of the right of establishment and of the freedom to provide services in the member states, to facilitate assurance undertakings with head offices in the Community to assume commitments within the Community and to allow policy holders to have recourse not only to assurers established in their own country, but also those with their head office in the Community and established in other member states.

To achieve these aims, the European Council enacted Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and

[236] For more, see, FERRARINI G., Prudential Regulation of Banks and Securities Firms: European and International Aspects (The Hague: Kluwer Law International, 1995) p. 241

[237] FERRARINI G., 'The European Regulation of Stock Exchanges: New Perspectives', Common Market Law Review, Vol. 36, 1999, p. 572.

[238] Commission v. Germany, case 205/84, 4/12/1986, ECR 1986, 3755.

administrative provisions relating to direct insurance other than life assurance and amended Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive)[239] and Council Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance.[240] The objective of these Directives is to allow any insurer authorized in a member state to carry out its insurance activities throughout the EU, whether under the rules on branches or under the freedom to provide services. As was the case for the Second Banking Directive regarding banking services, the Directives introduced a single system for the financial supervision of an insurer by its member state of origin (home-country control).[241]

Although the Council broadened the concept of regulated markets to include insurance, many directives have given member states the right to apply their national law to undertakings supplying insurance services in their territory as regards financial position, the conditions of insurance and permanent supervision to ensure that those rules are complied with. As a consequence, the Directives still retain the right of member states to recourse to the concept of the general good in order to enforce compliance with its own laws by an insurer wishing to carry on its business within its territory under either the right of establishment or the freedom to provide services. Such areas include prior notification of the technical bases used for calculating premiums for life insurance.

Capital redemption operations by insurers may be conducted anywhere in the Community, even in a member state where they are not authorized as local life insurance companies, on the grounds that such operations are regarded as banking operations and are therefore reserved for credit institutions. However, the insurer must comply with the rules in force in the host member state, which are justified by reasons of the general good (i.e. taxation, advertising). Maximum technical interest rates for life assurance are fixed by the insurer's home member state. Since the host member state has no competence as regards financial supervision of an insurer duly authorized in its home member state, it follows that it cannot impose compliance with its own prudential principles or enforce compliance through substantive control of premium scales. Compulsory stipulation of a surrender value in life assurance policies is justified by the concept of the general good as it gives consumers flexibility and the ability to mobilize their savings. However, the Commission

[239] Official Journal L 228 , 11/08/1992 P. 1 – 23.
[240] Official Journal L 345 , 19/12/2002 P. 1 – 51.
[241] SMULDERS B., 'Harmonization in the Field of Insurance Law Through the Introduction of Community Rules of Conflict', Common Market Law Review, Vol. 29, 1992, pp. 775-797. Also see, EDWARD D., 'Establishment and Services: An Analysis of the Insurance Cases', European Law Review, Vol. 12, 1987, pp. 231-256. OTTOW A., 'An Internal Insurance Market before the Turn of the Century', Common Market Law Review, Vol. 29, 1992, pp. 511-536.

wonders whether there are other means, such as the obligation to give detailed information to the policyholder prior to the conclusion of a policy, which could protect the economic interests of policyholders.

All in all, it may be clear from this brief overview that the European Council has made many inroads in liberalizing financial services in the internal market by transferring the majority of their rules from the competence of member states to EU institutions and thus making them Community common policy. This continuing harmonization process is gradually narrowing the scope of the notion of general good, which still represents one of the major deficiencies in the process of liberalizing EU financial services. A single market in financial services within the EU might be soon accomplished. However, the harmonization of rules relating to financial services with third countries still lags behind.

1.1.2. The EU liberalization of services with third countries

The chapters of the EC Treaty on establishments and services do not contain any material rules regarding the relationship between member states and third countries. The only article to include third countries in its text is Article 49(2) in the chapter on services, which stipulates that:

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

In general, this clause leaves the regulation of the right of establishment and the freedom to provide services by institutions originating from third countries to the Council. Yet, until now, the Council has not relied on this clause to adopt directives extending the free movement of services to nationals of a third country. The Council has justified its approach by claiming that it cannot rely on this clause to regulate the most important aspects of the Community's external trade in services.[242] Instead, the Council has adopted the view that Article 47(2) is sufficiently wide to mandate it the regulation of the right of establishment and services with third countries.[243] The Council has relied on Article 47(2) to enact directives which, to a large extent, regulate internal matters but which also have an external or international dimension.

[242] MOLLE W., The Economics of European Integration, 2nd Edition (Adershot: Dartmouth, 1994) p. 146.
[243] EECKHOUT P., The European Internal Market and International Trade: A legal Analysis (Oxford: Clarendon Press, 1994) p. 19.

Such directives include, for example, Council Directive 93/22/EEC of May 10, 1993 on investment services in securities and the Consolidated Banking Directive 2000/12/EC.

As regards financial services, the main objective of these directives is to regulate the presence of third countries' undertakings in the EU, taking into consideration that procedures for the authorization of branches of undertakings authorized in third countries will continue to apply. However, branches will not enjoy the freedom to provide services under the second paragraph of Article 49 of the Treaty or the right of establishment in member states other than those in which they are established. Requests for the authorization of subsidiaries or of the acquisition of holdings by undertakings governed by the laws of third countries are subject to a procedure intended to ensure that Community investment firms receive reciprocal treatment in the third countries in question.

Therefore, a flexible procedure is needed to make it possible to assess reciprocity on a Community basis. The aim of this procedure is not to close the Community's financial markets, but rather to keep the Community's financial markets open to the rest of the world and to improve the liberalization of global financial markets in third countries. To that end, these Directives provide procedures for negotiating with third countries and, as a last resort, the possibility of taking measures involving the suspension of new applications for authorization and the restriction of new authorizations.

It can be concluded that the Council has not expanded the freedom of establishment and the provision of financial services to undertakings originating from third countries in order to attain effective market access by Community enterprises in third countries.[244] The Council has in mind that the organization of these rights depends mainly on bilateral and multilateral negotiations which are subject to different rules, principles and, most importantly, a system based upon mutual concessions.[245]

For example, the principles of reciprocity, most-favored-nation and national treatment occupy a major role in the ongoing talks over the WTO Doha Negotiations.[246] Since the Council is the party responsible for regulating the Community's right of establishment and the provision of financial services with third countries, it is important to look at these rights in the Council Directives to understand the relationship between the Community and third countries. This

[244] VIPOND P, 'The Liberalization of Capital Movements and Financial Services in the European Single Market: A Case Study in Regulation', European Journal of Political Research, Vol. 19, 1991, p. 229.
[245] For example, GATS, OECD, EEA and Euro-Mediterranean Association Agreements.
[246] EECKHOUT P., op. cit., pp. 68-83.

reveals that the Council's first priority was to regulate the right of establishment of third countries' undertakings already established in the Community. The Council has shared the regulation of the free movement of financial services with member states.

The Council harmonized the rules covering the establishment of branches by undertakings originating from third countries in the Community. Directives have made the establishment of credit institutions from third countries and the provision of financial services connected with them subject to a set of rules different from those covering resident establishments. To clarify this point, we refer to the rules laid down in Council Directive 2000/12/EC of 20 March 2000 on the taking up and pursuit of business in credit institutions.[247] Under Title IV of this Directive, entitled Relations with Third Countries, Articles 23-25 makes the establishment and provision of financial services by non-EU credit institutions subject to a different set of rules from those applying to EU credit institutions.[248] These Articles subject member states and the Commission to more stringent obligations regarding the establishment of non-EU credit institutions.[249]

Member states are subject to the following obligation with relation to subsidiaries of non-EU credit institutions: in so far as the establishment by a non-EU parent undertaking (which is itself governed by the laws of a third country) of a direct or indirect subsidiary is subject to an authorization by a EU member state, such member state is obliged to inform the Commission of the granting of any such authorization (Article 23., first al., 1 (a) of the Directive). The combined effect of this rule and that laid down in Article 4 of the Directive (that member states must require credit institutions to obtain authorization before commencing their activities) is that the establishment in an EU member state of a subsidiary by a non-EU credit institution (subject to the law of a third country) requires prior approval by the host member state, which must inform the Commission of any authorization.

If authorization is granted to the subsidiary of a non-EU credit institution, the member state should specify to the Commission the structure of the group of (one or more) parent undertakings (Article 23., second al. of the Directive). The member state should inform the Commission whenever a non-EU parent The member state should inform the Commission whenever a non-EU parent undertaking acquires a holding in a Community credit institution such that the

[247] OJ L 126, 26/05/2000, 1-59.

[248] Another example is Article 7 of Council Directive 93/22/EEC of May 10, 1993 on investment services in securities OJ L 141, 11/06/1993, 27. As last amended by Council Directive 2000/64/EC, OJ L 290. 17/11/2000, 27-28. The wording of Article 7 is almost identical to Article 23 of Directive 2000/12. For more see, CASHIN E., 'The Investment Service Directive: An Overview', Journal of International Banking Law, Vol. 4, 1997, p. 148.

[249] For a detailed study of this Article see, CHATTERJEE C., 'The EC Second Banking Directive: Relations with Third Countries', Journal of International Banking Law, Vol. 12, 1995, pp. 511-16

latter would become the subsidiary of the parent undertaking (Article 23., first al., 1 (b) of the Directive). The member state should inform the Commission of any difficulties encountered by EU credit institutions in establishing themselves or carrying out financial services in a third country (Article. 23.2. of the Directive).

The Commission itself is obliged and mandated to do the following:

(i) The Commission should inform the Banking Advisory Committee[250] of all information presented by member states. More especially, the Commission must inform the Banking Advisory Committee of the fact that it has received information based upon Article 23, first al., 1 (a) of the Directive (the granting of authorization) or upon Article 23., first al., 1 (b) of the Directive (the acquisition of a holding by a non-EU parent undertaking in a Community credit institution such that the latter would become its subsidiary).

(ii) The Commission should report periodically to the Council of the treatment accorded to Community credit institutions in third countries (Article 23.3 of the Directive).

(iii) Whenever it may appear to the Commission that a third country has refused to grant Community credit institutions effective market access comparable to that granted by the Community to credit institutions from that country, the Commission may submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining competitive opportunities for Community credit institutions. The decision to issue a mandate shall be taken by the Council by a qualified majority (Article 23.4 of the Directive).

(iv) Whenever it may appear to the Commission that a third country does not grant Community credit institutions national treatment (offering the same competitive opportunities as are available to domestic credit institutions of the third country) and the conditions of effective market access are not fulfilled, the Commission may initiate negotiations with that third country in order to remedy the situation (Article 23.5, first al. of the Directive).

As a result of, or during the negotiations based upon Article 23.5, first al. of the Directive, the Commission may ask member states to limit or suspend their decisions regarding requests pending or future requests for authorization and the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country under question. The

[250] Established by the First Banking Directive 77/78/EEC to assist the Commission in its preparations for new proposals to the Council concerning further coordination as regards credit institutions. For more see, European Commission, Institutional Arrangements for the Regulation and Supervision of the Financial Sector, January 2000, p. 5.

maximum duration of such measures is three months (Article 23.5, second al. of the Directive) but may be, if proposed by the Commission, extended by the Council by a qualified majority (Article 23.5, third al. of the Directive). However, such limitations do not apply to third country credit institutions already operating in the Community (in accordance with the principles of the Directive - Article 23.5, fourth al.).

(v) Articles 23.4 and 23.5 of the Directive subject member states to the enhanced information obligations contained in Article 23.6.

Article 24 relates to branches of credit institutions with head offices outside the Community.[251] It stipulates that member states should not grant branches of credit institutions with head offices outside the Community more favorable treatment than that granted to branches of EU credit institutions (Article 24.1 of the Directive). The Community can, through agreements with one or more third countries, agree on the basis of the principle of reciprocity, to grant such branches identical treatment throughout the Community.

Consequently, whenever a parent undertaking of a third country has established itself by creating a subsidiary in the Community in accordance with the directive, having been accorded full authorization as stipulated, other member states must treat the authorized subsidiary in accordance with the principle of national treatment. In other words, such a subsidiary will be accorded the same treatment as that granted to Community undertakings.

Branches of subsidiaries of foreign undertakings established directly in a member state are not, with certain limited exceptions, subject to the same system of mutual recognition throughout the EC. On the contrary, branches of foreign undertakings only receive approval to operate in the territory of the one host member state in which they have been established, under conditions equivalent to those applied to domestic financial institutions of that member state, and may be required to satisfy a number of specific prudential requirements such as, in the case of banking and securities, separate capitalization and other solvency requirements and reporting and publication of accounts requirements or, in the case of insurance, specific guarantee and deposit requirements, separate capitalization, and the localization in the member state concerned of the assets representing the technical reserves and at least one third of the solvency margin.

Member states may apply the restrictions indicated in this schedule only with regard to the direct establishment from a third country of a branch

[251] For a detailed study see, NORTON J. and others, International Banking Operations and Practices: Current Developments (London: Graham & Trotman, 1994).

or commercial presence or to the provision of cross-border services from a third country. A member state may not apply these restrictions, including those concerning establishments, to branches of an authorized third-country subsidiary which has been established in another member state of the Community in accordance with the rules of that member state unless such restrictions could also be applied to companies or nationals of other member states in conformity with Community law. Consequently, branches of authorized subsidiaries of third countries' parent undertakings receive the same treatment as the branches of all credit institutions which have been authorized by an EU member state.

1.2. The liberalization of capital movements in the European Union

The development of the EU's financial liberalization process has gone hand in hand with the economic and monetary policy of member states. In its early years, the liberalization of capital movements was not important because the objective of the EEC Treaty was a stable economic and monetary policy. Thus, member states were not obliged to liberalize capital movements if they ran counter to that objective. However, with the development of the internal market and economic and monetary union, the Council has gradually turned attention to the liberalization of capital. The free movement of capital within member states became a pre-requisite for the achievement of the internal market[252] and economic and monetary union. Thus, the EEC Treaty was amended by the EC Treaty, which fully liberalized capital movements between member states and between member states and third countries.

To understand the legal framework of capital movements and current payments among the EU member states and between member states and third countries, this section will first discuss the free movement of capital within the internal market and then the free movement of capital between member states and third countries.

1.2.1. The liberalization of capital in the internal market

The liberalization process of the free movement of capital within the Community started with Article 67(1) of the EEC Treaty abolishing capital restrictions between member states to the extent necessary to ensure the proper functioning of the common market. The Council took the lead by enacting a group of directives classifying capital movements into categories and making every category subject to a different degree of liberalization. The enactment

[252] The EEC Treaty referred to a "common market" but the Single European Act changed it to "internal market".

of Capital Directive 88/361 completely liberalized capital movements among member states. All these steps were inaugurated in the amendment of the EEC Treaty by the Maastricht Treaty or EC Treaty.[253]

The EC Treaty deals with the liberalization of capital movements in Article 56 Section 1, which stipulates:

Within the framework of the provisions set out in this Chapter, all restrictions on the free movement of capital between Member States and between Member States and third countries shall be prohibited.

This Article explicitly and clearly prohibits member states from introducing any kind of restrictions on the free movement of capital among its members. The important question is whether Article 56(1) is directly effective. Since the wording of this provision is clear, unambiguous, unconditional and is not dependent on further action being taken by the Council or national authorities, it was held that this provision is directly effective.[254] With regard to the expression Within the framework of the provisions set out in this Chapter, the ECJ stated that this expression should be read in conjunction with the entire chapter, in particular, Article 57(1) and Article 58(1b). Since the exceptions and limitations enclosed in those two articles do not preclude the implementation of Article 56(1), this Article may be relied on before national courts to hinder the application of national rules inconsistent therewith.[255] It has been argued that the provisions of the free movement of capital are only confined to direct restrictions that prohibit the conclusion of capital transactions but not indirect restrictions, such as taxation.[256] This argument has no legal basis and therefore, the provision of capital should be construed to include both direct and indirect restrictions on free movement.

The doctrine of direct effect means that member states have to comply with the principle of free movement of capital within the Community without any other enactment on the part of Community institutions. It also confers rights on individuals that can be relied on before their national courts to circumvent any rules inconsistent with EU law. Applying the direct effect notion to Article 56 means that member states have to abolish and prohibit all restrictions on the free movement of capital between themselves. If they fail to comply, individuals can rely on Article 56 to ask their national courts to abolish the laws that restrict the free movement of capital. As guardian of EU law, the Commission can[257] ask member states through a reasoned opinion to alter

[253] The EC Treaty was signed in Maastricht and entered into force on November 1, 1993.
[254] HARTLEY T., The Foundation of European Community Law, 3rd edition (Oxford: Clarendon Press, 1994) p. 200.
[255] Sanz de Lera Joined cases C-163/94, C-165/94 and C-250/94 on 14/12/1995, ECR 1995 P. I-4821. Paragraph 41-45.
[256] PETERS, M., 'Capital Movement and Taxation in the EC', The EC Tax Review, Vol. 1, 1998, p. 8.
[257] Article 226 (ex Article 169) of the EC Treaty.

their laws in a manner compatible with Article 56. If the relevant member does not comply, the Commission can bring the member before the ECJ.[258]

Moreover, Article 56(1) required the abolition of all restrictions on free movement of capital between member states. Not only persons resident in member states can benefit from this article but also non-residents, provided that the transaction is taking place between EU members.[259] Accordingly, Article 56 of the EU Treaty has fully liberalized capital movement within the Community. It is very important to recognize that capital movements in the context of EU law are those numerated in Capital Directive 88/361, as follows:

EU Capital Transactions as Recognized by Capital Directive 88/361

I. Direct Investment

1. Establishment and extension of branches or new undertakings belonging solely to the person providing the capital and the acquisition in full of existing undertakings.
2. Participation in new or existing undertakings with a view to establishing or maintaining lasting economic links.
3. Long-term loans with a view to establishing or maintaining lasting economic links.
4. Reinvestment of profits with a view to maintaining lasting economic links.

A - Direct investments on national territory by non-residents.
B - Direct investments abroad by residents.

II- Investment in Real Estate
(not included under I)

1. Investments in real estate on national territory by non-residents.
2. Investments in real estate abroad by residents.

III- Operations in Securities Normally Traded on the Capital Market (not included under I, IV and V)

1. Shares and other securities of a participatory nature.
2. Bonds.

[258] For example, Commission v Belgium, case C-478/98 on 26/09/2000, ECR 2000 P. I-7587.
[259] USHER J., The Law of Money and Financial Services in the European Community (Oxford: Clarendon Press, 1994) p. 26.

A- Transactions in securities on the capital market

1. Acquisition by non-residents of domestic securities traded on a stock exchange.
2. Acquisition by residents of foreign securities traded on a stock exchange.
3. Acquisition by non-residents of domestic securities not traded on a stock exchange.
4. Acquisition by residents of foreign securities not traded on a stock exchange.

B- Admission of securities to the capital market

1. Introduction on a stock exchange.
2. Issue and placement on a capital market.
   (i) Admission of domestic securities to a foreign capital market.
   (ii) Administration of foreign securities to the domestic capital market.

IV- Operations in Units of Collective Investment Undertakings

1. Units of undertakings for collective investment in securities normally traded on the capital market (shares, other equities and bonds).
2. Units of undertakings for collective investment in securities or instruments normally traded on the money market.
3. Units of undertakings for collective investment in other assets.

A- Transactions in units of collective investment undertakings

1. Acquisition by non-residents of units of national undertakings traded on a stock exchange.
2. Acquisition by residents of units of foreign undertakings traded on a stock exchange.
3. Acquisition by non-residents of units of national undertakings not traded on a stock exchange.
4. Acquisition by residents of units of foreign undertakings not traded on a stock exchange.

B- Administration of units of collective investment undertakings to the capital market

1. Introduction to a stock exchange.
2. Issue and placement in a capital market.

(i) Admission of units of national collective investment undertakings to a foreign capital market.
(ii) Admission of units of foreign collective investment undertakings to the domestic capital market.

V- Operations in Securities and Other Instruments Normally Traded on the Money Market

1. Transactions in securities and other instruments on the money market.

A. Acquisition by non-residents of domestic money market securities and instruments.

B. Acquisition by residents of foreign money market securities and instruments.

2. Admission of securities and other instruments to the money market.

A. Introduction to a recognized money market.

B. Issue and placement in a recognized money market.

(i) Admission of domestic securities and instruments to a foreign money market.

(ii) Admission of foreign securities and instruments to the domestic money market.

VI- Operations in Current and Deposit Accounts with Financial Instruments

1. Operations carried out by non-residents with domestic financial institutions.

2. Operations carried out by residents with foreign financial institutions.

VII- Credits Related to Commercial Transactions or to the Provision of Services in which a Resident is Participating

1. Short-term (less than one year).
2. Medium-term (from one to five years).
3. Long-term (five years or more).
   A. Credits granted by non-residents to residents.
   B. Credits granted by residents to non-residents.

VIII- Financial Loans and Credits
(not included under I, VII and XI)

1. Short-term (less than one year).
2. Medium-term (from one to five years).
3. Long-term (five years or more).
   A - Loans and credits granted by non-residents to residents.
   B - Loans and credits granted by residents to non-residents.

IX- Sureties, Other Guaranties and Right of Pledge

1. Granted by non-residents to residents.
2. Granted by residents to non-residents.

X- Transfers in Performance of Insurance Contracts

1. Premiums and payments in respect of life assurance.
   A. Contracts concluded between domestic life assurance companies and non-residents.
   B. Contracts concluded between foreign life assurance companies and residents.
2. Premiums and payments in respect of credit insurance.
   A. Contracts concluded between domestic credit insurance companies and non-residents.
   B. Contracts concluded between foreign credit insurance companies and residents.
3. Other transfers of capital in respect of insurance contracts.

XI- Personal Capital Movements

1. Loans.
2. Gifts and endowments.
3. Dowries.
4. Inheritances and legacies.
5. Settlement of debts by immigrants in their previous country of residence.
6. Transfers of assets constituted by residents, in the event of emigration, at the time of their installation or during their period of stay abroad.
7. Transfers, during their period of stay, of immigrants' savings to their previous country of residence.

XII- Physical Import and Export of Financial Assets

1. Securities
2. Means of payment of every kind

XIII- Other Capital Movements

1. Death duties
2. Damages (where these can be considered as capital)
3. Refunds in the case of cancellation of contracts and refunds of uncalled-for payments (where these can be considered as capital)
4. Authors' royalties: patents, designs, trade marks and inventions (assignments and transfers arising out of such assignments)
5. Transfers of the monies required for the provision of services (not included under VI)
6. Miscellaneous

Source: Annex I of Capital Directive 88/361

1.2.2. The liberalization of capital movements with third countries

The EC Treaty deals with the movement of capital between member states and third countries in Article 56(1). This Article states the following:

Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.

The most important feature of this Article is that it does not distinguish between capital movements within member states and those with third countries, which indicates that member states should treat capital movements with third countries in the same way as those between member states. In other words, member states are prohibited from introducing any kind of measures that might restrict capital movements with third countries. Moreover, member states are obliged to abolish all existing restrictions on capital movement with third countries in their national legislation.[260] The important question arises whether the exclusive scope of Article 56(1) in liberalizing capital movements within member states should be extended to include third countries.

The ECJ answered this question in Sanz de Lera and others.[261] In this case, Spanish individuals attempted to smuggle out of the country a sum of money exceeding that authorized by Spanish law. The destination of the smuggled money was Turkey and Switzerland, which are not EU Members. The Spanish government argued that under national law every export of coins, banknotes and bearer cheques exceeding 5 million PTA should be subject to prior authorization. The smugglers claimed that those measures were inconsistent with Article 73b(1) (Article 56).

In order to determine the scope of Article 56(1) with regard to third countries, the ECJ deemed that the notion of direct effect be applied. The most important phrase that could deny Article 56 the notion of direct effect[262] was Within the framework of the provisions set out in this Chapter. In its judgement, the ECJ stated that this expression relates to the whole chapter and therefore, Article 56(1) must be interpreted in conjunction with Articles 57 and 58.[263] Article 57 limits the application of Article 56 with third countries to restrictions existing on 31 December, 1993 with regard to direct investment (including in real estate), establishments, the provision of financial services or the admission of securities to capital markets. In this sense, the court stated that Article 57 is precisely worded.

[260] USHER J., 'Capital Movement and the Treaty on European Union', Yearbook of European Law, Vol. 12, 1992, p. 43.
[261] Joined cases no. C-163/94, C-165/94 and C-250/94, 14/12/1995, ECR 1995, P. I-4821.
[262] For a critical view of the notion of direct effect see, SEBBA, I., 'The Doctrine of Direct Effect: a Malignant Disease of Community Law', Legal Issues of European Integration, 1995/2, pp. 35-57.
[263] Para. 42 of the judgment.

Therefore, the authority of the Council to restrict capital movements is confined to those exceptions and does not include other transactions.[264] Furthermore, Article 58 gives member states the right to restrict capital movements in the field of taxation, prudential supervision of financial institutions and for public policy or public security purposes. Thus, the ECJ reiterated that the right of member states to restrict capital movements in these fields is subject to judicial review and therefore does not stem the direct effect of Article 56(1).[265]

Consequently, the ECJ reached the conclusion that since the wording of Article 56(1) is clear, unambiguous, unconditional and not dependent on further action being taken by the Commission or national authorities, it is directly effective.[266] This conclusion means that the scope of Article 56(1) should be interpreted exclusively, i.e. that it must include all capital movements between member states and third countries. It has been argued that this judgment must not be interpreted exclusively to include all capital movements because unilateral liberalization of capital movements towards third countries could distort the harmonious development of the Community's internal market. Therefore, its scope should be confined to coins, banknotes or bearer cheques.[267]

This argument is incorrect. The scope of Article 56(1) must be interpreted exclusively to include all capital movements with third countries for the following reasons:

(i) The structure of the chapter on capital reinforces this interpretation. If Article 56(1) is not directly effective, the Council must be mandated to gradually put it into action through directives compatible with the economic and monetary development of member states.[268] For instance, the EEC Treaty in Article 69 mandated the Council to implement Article 67. Also, Article 57(1) of the EC Treaty mandated the Council to liberalize capital movement with third countries as regards direct investment (including real estate), establishments, the provision of financial services or the admission of securities to capital markets.[269] Since Article 56 did not grant the Council such a right, it should be construed to include all capital movements with third countries.

(ii) The ECJ in Sanz de Lera did not make a distinction between authorization required for capital movements within the Community or with third countries. The ECJ held that Articles 73b(1) and 73d(1)(b)[270] (Articles 57 and 58

[264] Paras. 44-46.
[265] Para. 43.
[266] Para. 41 of the judgment.
[267] MOHAMED S., EC Court Sanctions International Capital Movements, op. cit., 98.
[268] AUGI D., and BARATELLA D., 'New Developments in the European Court of Justice's Case Law on the Direct Applicability of Community Directives', The European Legal Forum, No. 2, 2000/01, p. 84.
[269] USHER J., The Law of Money and Financial Services in the European Community, 2nd edition (Oxford: Oxford University Press, 2000) p. 232.
[270] They renumbered consistently as Articles 56(1) and 58(1)(b) after the Amsterdam amendments.

respectively) of the EU Treaty preclude rules which make the export of coins, banknotes or bearer cheques conditional on prior authorization but do not by contrast preclude a transaction of that nature being made conditional on a prior declaration.[271] This reiterates the rule that capital movements between member states and third countries should be treated the same way of those within member states.

(iii) The ECJ deliberated the applicability of the limitations in Article 57(1) on the case concerned. It decided that the export of coins, banknotes or bearer cheques might derive from transactions like direct investment (including real estate), establishments, the provision of financial services or the admission of securities to capital markets. However, this does not mean that the export of coins, banknotes and bearer cheques are transactions connected only with these operations because these transfers are capital movement by nature according to list I of Capital Directive 88/361.[272] However, since such transfers could be used for the purposes of constituting one of the transactions restricted in Article 57(1), member states have the right to investigate if the transfer of coins, banknotes or bearer cheques to third countries will be used to conduct a liberalized transaction.[273] This means that all capital movements are free except those movements that explicitly infringe EU law.

The ECJ confirmed the exclusive interpretation of Article 56(1) with third countries in Trummer and Mayer.[274] This case questioned whether the creation of a mortgage to secure a debt payable in the currency of another member state falls within the scope of Article 56. This case had a special importance because the ECJ's judgment would either confirm Sanz de Lera or would restrict it. The ECJ dealt with the question in an exclusive manner and did not distinguish between capital movement within member states and those with third countries. This makes it clear that the scope of Article 56(1) includes capital movements between member states and between member states and third countries.[275] Accordingly, the claim that the scope of the ECJ in Sanz de Lera should be confined to the export of coins, banknotes or bearer cheques and should not be extended to include all capital movements with third countries is invalid. Therefore, all capital movements between member states and third countries are free unless explicitly restricted by the EC Treaty.

[271] Paragraph 30 of the judgment.
[272] List I of Capital Directive 88/361 placed the transfer of coins, banknotes or bearer cheques on Title XII called "Physical import and export of financial assets." Meanwhile, the limitations included in Article 57 were placed in another category.
[273] Para. 37 of the judgment.
[274] Case C-222/97, 16/03/1999, ECR 1999, I- 1661.
[275] LANDSMEER A., 'Capital Movements: on the Interpretation of Article 73b of the EC Treaty', Legal Issues of Economic Integration, Vol. 27, NO. 2, 2000, p. 195.

2. The liberalization of capital and financial services in Palestine

Although the EU-PLO did not regulate the provision of capital, services and the right of establishment, the PA has been developing its regulatory umbrella in a manner compatible with best international practices. The Law on Encouragement of Investments in Palestine of 1998[276] promotes capital investment in all sectors of the Palestinian economy by both local and foreign corporations registered to do business in the WBGS.[277] A foreign investor can fully own a company without any local partnership requirements. Investors may invest in any sector of the Palestinian economy under the free admission principle. Transfers of foreign currency are free and there is freedom of repatriation of income generated from investment in Palestine. The Jordanian Companies Law of 1964[278] governs the registration of companies in the WB, with the exception of companies doing business in non-autonomous areas of the WB, which is governed by the Israeli Military Order on Companies Registration Renewal No. 398 of 1970.[279] The prevailing legal framework to register a company in Gaza is the British Mandatory Companies Law of 1929.[280] In the West Bank, registration of companies falls within the auspices of the Ministry of National Economy, while in Gaza registration falls under the jurisdiction of the Ministry of Justice, which is also responsible for administering the Company Law.[281]

Despite the decline in the economy, the Palestinian financial system remains functioning and liquid. The Banking Law of 1997, revised in 2002 and approved by the PLC to enter into force in 2003,[282] has not been fully implemented. The Law was revised to bring it more in line with Basle core principles. It stipulates that locally incorporated banks and foreign branches must set aside 10 percent of net annual profits to a local reserve, up to a maximum of its capital base. The revised law also details guidelines for both internal and external auditing of banks, data obligations to the Monetary Authority and sets out the guidelines for on-and off-site inspection, penalties, liquidations and mergers. More than ten years after the establishment of the Palestinian Securities Market, the PA has enacted the necessary regulations to regulate capital market transactions. The PA enacted the Securities Law in 2005[283] organizing securities classifications, listing and operations. The

[276] Palestine Official Gazette, Issue no. 23, 08/06/1998, p. 5. This Law replaced the Investment Promotion Law, No. 6 of 1995. Palestine Official Gazette, Issue no. 5, 05/06/1995, p. 6.
[277] MOLKNER and ABDUL-HAMID R., The Legal Structure of Foreign Investment in the West Bank and Gaza Strip (Jerusalem: Israeli-Palestinian Center for Research and Information (IPCRI), 1994).
[278] Jordanian Official Gazette, Issue no. 1757, 03/05/1964, p. 493.
[279] Proclamations, Orders and Appointments (Israeli Occupation - West Bank), No. 23, 30/08/1970, p. 820.
[280] Drayton's Collection, 22/01/1937, Chapter 22, p. 181.
[281] ABUSALQAN J., Money and Finance in Palestine (Ph.D. Thesis, Erlangen-Nurnberg University, Germany, 2001) p. 268.
[282] Palestine Official Gazette, Issue no. 41, 06/06/2002, p. 5.
[283] Palestine Official Gazette, Issue no. 53, 28/02.2005, p. 10.

Capital Market Authority Law enacted in 2005[284] covered the jurisdiction of the Commission and its structure. The regulatory framework for the banking sector and securities used to be further advanced than that of the insurance sector. The Palestinian insurance sector was, until recently, still covered by Jordanian and Israeli military orders issued before Oslo. The newly-enacted Palestinian Insurance Law has replaced these old regulations.

The following discussion on Palestinian liberalization of financial services will concentrate on: direct foreign investment, banking and credit transactions, capital market transactions, insurance transactions, real estate transactions and capital movements.

2.1 Direct foreign investment

The Israeli Civil Administration (ICA) did not encourage or regulate investment in the WBGS up until 1991 when it enacted Military Order on Encouragement of Capital Investment No. 1342 of 1991 in the WB[285] and No. 1055 of 1991 in the GS.[286] These two orders established a department under the ICA responsible for (i) promoting and regulating all activities that encourage investment; (ii) approving investment projects and their implementation; (iii) coordinating and solving conflicts between the ICA and investors. The objective of these Orders was to promote investment in the WBGS through incentives on income and property taxes for a period of three years. Facts on the ground proved that these incentives were not enough to convince investors to invest in the occupied Palestinian territories.[287]

Following its inauguration, the PA enacted the Law on the Encouragement of Investment in Palestine No. 1 of 1998 (Investment Law).[288] The objectives of this law are to create a Public Investment Promotion Authority for the promotion of investment in Palestine, to provide incentives and guarantees for investment projects and to create a suitable environment for investment.[289] To this end, the Investment Law introduced a generous package of tax incentives and

[284] Palestine Official Gazette, Issue no. 53, 28/02.2005, p. 60. For more see, ZAVADJIL M. and others, Recent Economic Developments, Prospects, and Progress in Institution Building in the West Bank and Gaza Strip (Washington DC: IMF, 1997) p. 27.

[285] Proclamation, Orders and Appointments, Issue no. 121, July 1991, p. 373. As amended by Military Order no. 1407 of 1993. Proclamation, Orders and Appointments, Issue o. 151, November 1993, p. 1419.

[286] Proclamation, Orders and Appointments, Issue no. 93, 05/04/1992, p. 10339. As amended by Military Order no. 1099 of 1993. Proclamation, Orders and Appointments, Issue no. 96, 15/05/1994, p. 10599.

[287] MOLKNER and ABDUL-HAMID R., The Legal Structure of Foreign Investment in the West Bank and Gaza Strip (Jerusalem: Israeli-Palestinian Center for Research and Information (IPCRI), 1994).

[288] Palestine Official Gazette, Issue no. 23, 08/06/1998, p. 5. This Law replaced the Investment Promotion Law, No. 6 of 1995. Palestine Official Gazette, Issue no. 5, 05/06/1995, p. 6.

[289] The PA enacted this law in close cooperation and coordination with many international organizations, especially the IMF. For more see, KANAAN O., 'The Peace Process, Uncertainty and Private Investment in the West Bank and Gaza Strip', Middle East Policy, Vol. VI, no. 2, October 1998, p. 67.

benefits,[290] liberalized all capital movements connected to investment projects and opened most Palestinian economic sectors to foreign investors.[291]

2.1.1 The liberalization of FDI operations

Article 10 of the Investment Law states:

> *In compliance with the provision of Article 11 of this law and in accordance with the free market economy, the Palestinian Authority guarantees to all investors the unrestricted right to transfer all their financial resources outside Palestine including the capital, profits, dividends, capital profits, wages, salaries, interests, debt payments, management fees, technical assistance, other fees and compensation money for expropriation, cancellation of licenses, court decisions, arbitration awards and any other form of payments or financial resources. The investor may freely transfer all the financial resources outside Palestine at the rate of exchange in force and prevailing in the market at the time of transfer and in a convertible currency acceptable to the investor.*[292]

This Article clearly liberalizes all capital movements connected to FDI. The Investment Law does not define the meaning of "financial resources" but the Article indicates that it includes the principal capital, cash and assets, and all capital connected to the investment such as profits, dividends, wages, salaries, interests, debt payments and other transactions numerated in the Article. The World Bank Investment Guide definition of financial resources includes the wages and savings of expatriate personnel, investment profits, interest owed in external debt obligations of the enterprise, sums needed to satisfy other contractual obligations of the enterprise and investment capital upon liquidation or sale of the investment. Commenting on this Article, Fidler concluded that it contradicts the World Bank Investment Guide. This conclusion is not correct.[293]

---

[290] Articles 22-38 of the Investment Law. These Articles classify investment projects into four categories with each granted different exemptions: (i) A project with capital of $100,000 to $1,000,000 shall be granted exemption from income taxes for a period of five years and pay income tax of 10 percent of its net profit for another eight years. (ii) A project with a capital of $1,000,000 to $5,000,000 shall be granted exemption from income taxes for a period of five years and pay income tax of 10 percent of its net profit for another 12 years. (iii) A project with a capital of more than $5,000,000 shall be granted exemption from income taxes for a period of five years and pay income tax of 10 percent of its net profit for another 16 years. (iv) Projects, in accordance with a decision from the PA Cabinet upon recommendation from the Commission, with special capital and function shall be granted exemption from income tax for five years and pay income tax of 10 percent of their net profit for another 20 years. For more see, MILHEM F., The Legal Framework for Investment in the West Bank and Gaza Strip (MA thesis (in Arabic), Birzeit University, Palestine, 2000).

[291] FISHER S. and others, 'Economic Developments in the West Bank and Gaza since Oslo', The Economic Journal, no. 111, June 2001, p. 270.

[292] This author's translation.

[293] For more see, FIDLER D., 'Foreign Private Investment in Palestine Revisited: An Analysis of the Revised Palestinian Investment Law', Case Western Reserve Journal of International Law, Vol. 31, no. 1-3, 1999, p. 293.

The PA approach not only conforms to international standards but has even gone further than the minimum demanded by the World Bank Investment Guide.[294] For example, this Guide allows members to restrict the repatriation of the principal capital and its interest if such repatriation would cause a foreign exchange shortage.[295] Some might argue that Article 10 is inconsistent with IMF rules since it has considered many transactions as capital while the latter considers them as current payments. These transactions include profits, dividends, capital profits, wages, salaries, interests, debt payments, management fees and technical assistance. Article 10 is consistent with the IMF because it does not define capital transactions but rather liberalizes all transactions connected to the investment project without following the IMF definition too closely. The intentions of the PA are to assure foreign investors that their investments and financial assets will be firmly protected by the Investment Law.

2.1.2 Opening economic sectors to foreign investors

Article 3 of the Investment Law stipulates:

> *The investor may, pursuant to the provision of this law, invest in projects of any sector in the Palestinian economy unless prohibited by special laws.*[296]

This Article is the most important in the Investment Law, and unfortunately is also the vaguest. The most important factor for every investor is to know exactly the economic sectors that he/she can invest in. The Palestinian Investment Law has adopted the negative list approach,[297] which is the right approach if it contains all the prohibited sectors. Article 3 states that all Palestinian economic sectors are open to foreign investment except those prohibited by special laws. It is not the duty of the investor to peruse all Palestinian laws to ascertain where he/she may invest. In other words, this Article has failed to answer the question of which economic sectors foreign investors are not allowed to invest in.

Article 4 of the Investment Law gives part of the answer by stating that investment in the following economic sectors is conditional on prior approval by the PA Cabinet:

(i) Manufacturing and distribution of arms and ammunition or spare parts.

---

[294] The World Bank's Investment Guarantee Guide: http://www.miga.org/screens/pubs/guides/ iggpdfs/IGGen.pdf

[295] SHIHATA I., Legal Treatment of Foreign Investment: The World Bank Guidelines (London: Martinus Nijhoff Publishers, 1993) p. 83.

[296] This author's translation.

[297] The negative list means that investment in all sectors is allowed except for those

(ii) Aviation industries, including airports.
(iii) Production and distribution of electricity.
(iv) Re-processing of petroleum and its derivatives.
(v) Recycling of garbage and solid waste.
(vi) Telecommunications.
(vii) Radio and television authority.

It is important to note that the language of this Article is exclusive and does not distinguish between Palestinians and non-Palestinians, meaning that all investors, without regard to their nationality, must obtain approval. Some suggest that Article 4 does not prohibit investment in the sectors listed above but requires investors to obtain the approval of the PA Cabinet if they intend to benefit from the exemptions and privileges provided by the Investment Law. If the PA had intended this explanation, it could have done so explicitly as it did in Article 43, which states that:

> *All investments shall enjoy the incentives granted by this law with the exception of commercial projects, insurance, real estate except development projects, banks, money exchange companies and any other financial institutions except real estate mortgage companies.*[298]

This Article does not prohibit foreign investment in these sectors but simply excludes them from the scope of the Investment Law and means that the incentives, privileges and guarantees do not apply to investments in these sectors. Accordingly, the guaranteed right to transfer all capital movements connected to FDI does not cover capital transfers for or from investments in commercial projects, insurance, real estate except development projects, banks, money exchange companies, and any other financial institutions except real estate mortgage companies. In other words, FDI and all transactions connected to these projects are subject to the laws and principles enacted by the PA.[299] Thus, Article 4 contains some, but not all, sectors in which foreign and national investors must obtain PA approval. A review of all legislation enacted by the PA to date reveals that, in addition to Article 4, foreign investment is prohibited outright in the following sectors: [300]

(i) Commercial agencies: Foreign investors have no right to invest in commercial agencies in accordance with Article 2 of the Commercial Agency Law No. 2 of 2000.[301] This Article confines investment in commercial agencies to Palestinians.

[298] This author's translation.
[299] The PA liberalized all transfers aprt from the transfer of banks' profits.
[300] The review includes all Palestinian laws enacted up until Palestine Official Gazette Issue no. 43, 09/05/2002.
[301] Palestine Official Gazette, Issue no. 32, 29/02/2000, p. 92.

(ii) Telecommunications: Foreign investors cannot invest in the telecommunications sector under the Telecommunications Law No. 3 of 1996.[302] Article 2 of this Law hands ownership of the telecommunication sectors to the PA, although Article 3 authorizes the PA to mandate this sector to private companies. The PA has given the Palestinian Telecommunications Company (PALTEL) the exclusive right to exploit this sector for 20 years.[303] The first ten years of the contract are a full monopoly over all telecommunications services, except for the Mobile Voice telephone monopoly which lasts for five years or 120,000 lines, whichever comes first. Consequently, up until 2007[304] foreign investors cannot invest in the telecommunications sector. With regard to, Mobile Voice, foreign companies can invest in this sector since PALTEL has registered more than 120,000 lines.

The PA has made foreign investment in some sectors conditional on prior approval, such as those sectors listed in Article 4, or has fully prohibited it in other sectors, as provided by the Commercial Agent Law. While it is understandable to make investment in firearms, solid waste or even radio and television conditional on prior approval for public policy or public security reasons, it is irrational to make investment in other sectors conditional on approval. The real motive behind this is to protect PA economic interests since it holds a monopoly on these sectors through private-state controlled companies. Article 3 does not promote investment in Palestine and therefore must be amended to include all sectors that are closed to foreign investment.

2.2 Banking and credit transactions

After the occupation of the WBGS in 1967, the Israeli Military Commander enacted Military Order on Prohibition of Trading and Monetary Transactions (Banks) No. 7 of 1967 in the WB[305] and Military Order on the Closure of Banks in the Region No. 18 of 1967 in the GS.[306] Article 1 of these Orders ordered the closure of all banks, credit and financial institutions working in the WBGS and Article 2 prohibited all type of banking and financial transaction apart from money exchange agencies.[307] Israel allowed its banks to operate in the WBGS in order to bridge this financial vacuum. Up until 1987 when the first Intifada started, Israel had six banks with 39 branches operating in the WB.[308] However, as a result of winning a case in the Israeli High Court, the

[302] Palestine Official Gazette, Issue no. 12, 23/04/1996, p. 7.
[303] The maximum is 20 years as provided by a Resolution of the Minister of Post and Telecommunications, Telecommunications System No. 1 of 1996. Palestine Official Gazette, Issue no. 14, 27/08/1996, p. 6.
[304] PALTEL had a monopoly in 1997.
[305] Proclamation, Orders and Appointments (West Bank), Issue no. 1, 11/08/1967, p. 27.
[306] Proclamation, Orders and Appointments (Gaza Strip), Issue no. 1, 14/09/1967, p. 65.
[307] There were 13 banks with 32 branches working in the West Bank and Gaza Strip at that time.
[308] The World Bank, West Bank and Gaza: Creating a Framework for Foreign Direct Investment (Washington DC: the World Bank, 1995) p. 28.

Bank of Palestine was allowed to re-open its branch in Gaza City in 1981. Israel also allowed the Cairo-Amman Bank to re-open its branch in the WB city of Nablus in 1986.[309]

As a result of the Paris Protocol, the PMA assumed responsibility for the financial system in Palestine.[310] The objectives of the PMA are to secure a stable and sound banking system, maintain monetary stability and encourage economic growth in Palestine in line with general PA policy.[311] In particular, the PMA is responsible for supervising and regulating banks, including the regulation of all kinds of banking activities, their foreign activities, the licensing of banks formed locally and of branches, subsidiaries, joint ventures and representative offices of foreign banks and the approval of controlling shareholders.[312] Accordingly, the PMA allowed the establishment of new national and foreign banks in the WBGS and has so far licensed 23 banks with 126 branches.[313]

Although the PMA allowed new banks to operate, it has not yet enacted legislation necessary to regulate banking activities, such as a law on the control of foreign currency. However, PMA practices reveal that it has adopted a liberal financial system and has not restricted capital movements with regard to banking and credit transactions. In principle, this means that banking operations are free of all restrictions. For example, licensed banks in Palestine are not prohibited from lending, borrowing and giving letters of guarantee to residents in any convertible currency. Furthermore, licensed banks are allowed to engage in the acceptance of deposits, in investment portfolio management, joint funds in any currency, margin trading in any currency, asset swapping and any other instruments for their customers' accounts.[314]

This open policy was criticized as only benefiting the banks but not the Palestinian economy.[315] According to this criticism, at the end of 2001 total individual and private deposits of licensed banks amounted to $3398,81 million, of which $1219.99 million was used as loans and guarantees in Palestine[316], and represented 35.9 percent of total deposits.[317] These figures

[309] In 1989 Israel allowed both banks to open branches. The Bank of Palestine had five branches in Gaza and the Cairo-Amman Bank had 8 branches in the West Bank by 1993. For more, see HARRIS L., 'Money and Finance with Undeveloped Banking in the Occupied Territories', In: ABED G. (ed.), The Palestinian Economy: Studies in Development under Prolonged Occupation (London: Routledge, 1988) p. 191.

[310] The PMA was established on December 1, 1994.

[311] Article 5 of the Palestinian Monetary Authority Law No. 2 of 1997. Palestine Official Gazette, Issue no. 21, 31/01/1998, p. 5.

[312] Article IV (7) of Paris Protocol.

[313] These banks comprise 10 Palestinian, 11 Arab (nine Jordanian and two Egyptian) and two foreign banks (Grindlays and HSBC). Most of the Jordanian banks operating in Palestine are owned by members of the Palestinian Diaspora, which means that they are considered as national banks.

[314] IMF, 'West Bank and Gaza Strip Adopts Outward-Oriented Economic Strategy', IMF Survey, January 22, 1996, p. 25.

[315] SAMARA A., 'Globalization, the Palestinian Economy, and the Peace Process', Journal of Palestine Studies, Vol. XXIX, no. 2, Winter 2000, p. 29.

[316] PMA, Economic and Banking Developments in 2000-2001, March 2002, p. 11.

[317] This percentage reaches 80 percent in Jordan and 90 percent in Israel.

show that 63.9 percent of total bank deposits in the WBGS are transferred and deposited in Jordanian banks. These savings are therefore invested in Jordan and serve the Jordanian rather than the Palestinian economy.

To direct local saving to investments in the WBGS and to protect depositors, the PMA introduced the following restrictions on banking and credit transactions:

Firstly, the PMA introduced a minimum ratio of lending to deposits of 40 percent and a ceiling on the ratio of foreign assets to deposits of 65 percent.[318]

Secondly, the PMA took Decision No. 86 on December 23, 2000, restricting banks' credit operations as follows.[319]

(i) Licensed banks are not allowed to grant guarantees, loans or finance any direct or indirect investment to non-residents in the WBGS, including Jerusalem, without the prior approval of the PMA.

(ii) Licensed banks are not allowed to grant guarantees, loans or finance any direct or indirect investment outside the WBGS, Jerusalem not included, without the prior approval of the PMA.

(iii) Licensed banks are not allowed to grant credit for buying or selling stocks, bonds or derivatives and to keep these financial instruments as a mortgage for this credit.

(iv) Licensed banks are not allowed to grant credit or accept deposits for the purpose of engaging in financial brokerage in Palestine or any other country.

(v) Licensed banks are not allowed to buy stocks, bonds, or other financial instruments in any non-Palestinian company (not registered with the Companies Controller) working in Palestine[320] or invest in financial instruments of companies working outside Palestine without the prior approval of the PMA.

This Decision restricts the ability of licensed banks to engage in international credit operations. This policy is unlikely to increase domestic lending, promote growth or contribute to financial stability, but will impede the development of the banking sector and lead to disintermediation. Furthermore, this approach is inconsistent with the free market economy approach of the PA provided by the Palestinian Basic Law.

[318] This Decision was brought into force on December 31, 1998 and reduced the 65% ceiling on investment abroad by banks from 90 percent.
[319] The Palestinian Monetary Authority, The Sixth Annual Report, 2000, p. 23.
[320] These companies are mainly Israeli companies working in Jerusalem.

To create a suitable and sound legal framework for finance in Palestine, the PA enacted Banking Law No. 2 of 2002.[321] According to this law, financial companies intending to carry out banking, financial and all insurance activities must register themselves as public shareholding companies in accordance with the Jordanian Company Law No. 12 of 1964[322] in force in the WB and British Mandate Company Law No. 18 of 1929[323] in force in the GS. The Banking Law regulates the establishment, management, capital, operation requirements and other aspects of banks and financial companies in Palestine. The Banking Law does not distinguish between Palestinian and foreign companies and makes them all subject to the same rights and obligations. However, the Banking Law contains provisions that could be construed as limitations on foreign companies as follows:

Firstly, Article 11 states that foreign banks intending to operate through a branch must obtain a license from the PMA to operate in Palestine. The PMA will grant the license according to the following conditions:

(i) The foreign branch must identify the nationality and location of the headquarters of the parent bank.
(ii) It must be subject to the supervision of its home country's competent authority and must obtain its approval to operate in Palestine.
(iii) The principle of reciprocity must apply unless the PMA deems otherwise.
(iv) The branch must register itself in accordance with PA law as a foreign branch connected to the parent bank.
(v) It must submit a written pledge from its parent bank stipulating that the licensed branch will comply with all PA laws and PMA instructions. The licensed foreign branch must be subject to the direct supervision and inspection of the PMA.
(vi) The parent company must provide a written pledge of responsibility for the obligations of the branch and its financial support if needed.
(vii) The home country's competent authority must provide a letter stating that the branch will respect the rules and supervision of the PMA.
(viii) The PMA must ensure that the competent authority's rules are based on sound banking supervision, the minimum of which must be the application of internationally recognized banking supervisory standards.

Secondly, Article 32 states that a licensed foreign branch has no right to transfer its profits without prior approval from the PMA. This is a direct limitation on the right of foreign investors to transfer all profits resulting from their investments in Palestine. The Banking Law's restriction on this right is incompatible with

[321] Palestine Official Gazette, Issue no. 41, 06/06/2002, p. 5.
[322] Jordanian Official Gazette, Issue no. 1757, 03/05/1964, p. 493.
[323] Drayton's Collection, 22/01/1937, Chapter 22, p. 181.

the open economy policy adopted by the PA since its inauguration. The PA must amend this provision to allow foreign investors to transfer their profits if it wishes to attract and promote foreign investment. However, this restriction does not contradict the Palestinian Investment Law since the latter excludes financial institutions from its scope in Article 43.

Thirdly, a licensed foreign branch must deposit 5-10 percent of its capital with the PMA. The branch will not be able to transfer this percentage without the approval of the PMA and in the case of liquidation, the branch has no right to dispose of, or transfer abroad any of the branch assets or funds until it has met all its obligations in Palestine.[324] While it is acceptable to protect Palestinian savers, it is strange to demand that the foreign branch deposit 5-10 percent of its capital with the PMA. This percentage discriminates against the foreign branch and gives other banks an advantage.[325]

As a result of the Interim Agreement, the PA assumed responsibility for financial policy in the WBGS but its powers are limited. For example, the PMA has limited powers regarding exchange arrangements but has full authority over banking operations. The PA has virtually revoked all the orders above and replaced them with another policy to primarily serve the Palestinian economy.[326]

With regard to exchange arrangements, the Paris Protocol did not authorize the PA to introduce a Palestinian currency.[327] Until the introduction of the Palestinian Currency, the New Israeli Sheqel (NIS), the Jordanian dinar[328] and the US dollar will serve as three legal tenders in the WBGS and a means of payment for all purposes including official transactions. Any circulating currency will be accepted by the PA and by all its institutions, local authorities and banks, when offered as means of payment for any transaction. Accordingly, the use of three currencies instead of one domestic currency makes it difficult for the PMA to define and influence overall monetary policy in the WBGS. Most conventional indirect monetary instruments are not available to the PMA, especially control over the domestic money supply. The main indirect instruments currently available to the PMA are related to reserve requirements.[329]

[324] Articles 58(5) and 66 of the Banking Law.
[325] The Jordanian Banking Law does not require foreign branches to make such a deposit.
[326] The term "virtually" has been used to indicate that the PA did not explicitly repeal these military orders but replaced them with practical rules circulated to the financial institutions concerned in the WBGS.
[327] Article IV(9b) states: "Both sides will continue to discuss, through the Joint Economic Committee, the possibility of introducing mutually agreed Palestinian currency or temporary alternative currency arrangements for the Palestinian Authority."
[328] Article 1 of the Palestinian-Jordanian Agreement regarding Cooperation on Banking and Monetary Issues. Jordan Gazette, Issue no. 4028, 01/03/1995, p. 588.
[329] BARNETT S., 'Monetary Policy in the West Bank and Gaza Strip in the Absence of a Domestic Currency'. In: KANAAN O. and others, The Economy of the West Bank and Gaza Strip: Recent Experience, Prospects, and Challenges to Private Sector Developments (Washington DC: IMF, 1998) p. 29.

The PMA has assumed full powers and responsibilities for resident and non-resident accounts, exports and export proceeds, and payments and proceeds from invisible transactions and current transfers. For example, the PMA has lifted all restrictions enforced by the Bank of Israel on banking operations, including the accounts of residents and non-residents which can now be opened in any currency without limits on the sums credited or debited and regardless of the purpose of the account.[330] Furthermore, residents and non-residents have the right to transfer without limitation any sums they need to carry out visible or invisible transactions.[331]

2.3 Capital market transactions

Capital market transactions are not regulated in the legal framework in Palestine. Neither Jordanian law in force in WB[332] nor the British Mandate law in force in GS regulated capital market transactions. The PA allowed the establishment of the first Palestinian capital market in Nablus in the WB in early 1995. The Palestine Securities Exchange (PSE) was incorporated as a private shareholding company, with the Palestine Development & Investment Company (PADICO) and (SAMED) as its major investors.[333] In August 1996, the PSE was fully operational and on 7 November that year it signed an operating agreement with the PA for the licensing of brokerage firms to take place. On 18 February, 1997, the PSE conducted its first trading session. Twenty-five shareholding companies are currently listed at the PSE. These companies cover a wide range of sectors including pharmaceuticals, utilities, telecommunications, and financial services. The trading system is able to trade multiple instruments such as equities, bonds, money market instruments, warrants and rights within a number of various trading books, such as an odd lot book for orders less than the round lot board size and a special terms book for orders with special settlement or fill terms. The trading system allows for instruments to be traded and settled in different currencies.[334]

Since its establishment, the PA allowed the PSE, as a private company, to regulate itself in cooperation with the Ministry of Finance as stipulated in Section 4 of the PA-PADICO Agreement. A Board of eight Directors consisting

[330] ZAVADJIL M. and others, Recent Economic Developments, Prospects, and Progress in Institution Building in the West Bank and Gaza Strip (Washington DC: IMF, 1997) p. 27.
[331] VON ALLMEN U. and FISCHER F., 'The Choice of Future Exchange Rate Regime in the West Bank and Gaza'. In: VALDIVIESO R. and others (eds.), West Bank and Gaza: Economic Performance, Prospects, and Policies (Washington DC: IMF, 2001) p.112.
[332] Jordan enacted the first Securities Law in 1971 after the occupation of the WB by Israel.
[333] Some suggest that the establishment of the PSE was inconsistent with Palestinian law. For more see, JOZA R., The Legal Framework of Palestine Stock Exchange (MA Thesis (in Arabic), Birzeit University, Palestine, 2000).
[334] ABUSALQAN J., Money and Finance in Palestine (Ph.D. Thesis, Erlangen-Nurnberg University, Germany, 2001) p. 268.

of representatives from the PSE itself, investors and securities firms, regulates all of its operations such as listing requirements, secondary trading, settlement and clearing as well as the conduct and operations of member securities firms. The board formulates major policies regarding operations and administration, establishes management objectives, and approves or amends its rules and regulations.[335] However, the administration and operations of the PSE are conducted under the direct supervision of the Palestinian Ministry of Finance.

The Board of Directors administration of the PSE and the supervision of the Palestinian Ministry of Finance faced a fundamental change on 28 February, 2005. The President of the PA endorsed the Securities Law No. 12 of 1994 and the Capital Market Authority Law No. 13 of 2004.[336] Article 3 of the latter stipulates that the Capital Market Authority (CMA) is responsible for the supervision of the PSE, organization of trading and disclosure requirements and procedures. Therefore, the supervision of the PSE has been moved from the Board of Directors and the Ministry of Finance to the CMA.

The PSE's Board of Directors and afterwards, the Securities Law and CMA Law and their secondary regulations, adopted an open policy to the administration of the PSE which does not distinguish between residents and non-residents. There are therefore no restrictions on foreign investment in the PSE.[337] The most important rules include conditions on companies and brokerage firms listing in the PSE and non-resident investment.[338] With regard to listing, Article 6/1 states that companies (Palestinian or foreign) intending to register themselves in the PSE must meet the following conditions:[339]

(i) Their subscribed capital must exceed $1,000,000.
(ii) The number of outstanding shares must exceed 100,000.
(iii) The company must have at least 100 shareholders with $100 shares at par value.
(iv) The public must hold 25 percent of the common stock.
(v) At least 50 percent of the subscribed capital must be paid-up.

In order to be listed as members of the PSE, Article 2/1 states that brokerage firms must meet the following requirements:

(i) The company applying for membership must be established and registered

[335] Palestine Securities Exchange, About the Palestine Securities Exchange (Nablus, PSE Public Relations Office, 1997) p. 1.
[336] Palestine Official Gazette, issue no. 53, 28/02.2005, p. 60.
[337] ABUSALQAN J., op. cit., p. 269.
[338] GAMO-ALONSO P. and others, West Bank and Gaza Strip: Economic Developments in the Five Years of Oslo (Washington DC, IMF, 1999) p. 36.
[339] The Securities Listing Instructions of 2005.

in Palestine.
(ii) Its objectives and operations must be confined to capital market transactions.
(iii) The company's paid-in capital must be at least one million dollars.[340]

The PSE restricted foreign brokerage firms from operating in the Palestinian financial market by requiring that the company must be established in Palestine. This policy was meant to give the six local brokerage firms, already members of the PSE, time to train their teams and establish their own markets before allowing stronger, more experienced foreign brokerages to operate in the Palestinian market. Although this reason is understandable, this policy will not assist Palestinian brokerage firms since international competition is the driving force behind their development and the PSE as a whole.

Finally, the Board of Directors of the PSE, the Securities Law and the CMA Law adopt a free and open policy regarding foreign participation in the PSE. This open policy includes the following:[341]

(i) Non-Palestinians have the full right to acquire domestic securities traded on the PSE. Also, they can acquire domestic securities not traded in the PSE after obtaining the approval of the Companies' Controller.

(ii) Palestinians can also freely acquire foreign securities traded in the PSE or not traded in a stock exchange.

(iii) After obtaining the approval of the Ministry of Finance, Palestinian companies can sell their securities outside Palestine and non-Palestinian companies can sell their securities inside Palestine.

(iv) After obtaining the approval of the Ministry of Finance, non-Palestinian securities can be placed in PSE and Palestinian securities can be placed in foreign securities market.

This open policy adopted by the PSE intended, in the first place, to involve Palestinians in the Diaspora in the building of the Palestinian economy.[342] A clear example of this policy is Palestine Development and Investment Ltd. PADICO was incorporated by a group of Palestinian businessmen living in the Diaspora with capital of $200 million. After the signing of the Palestinian-

[340] The condition that at least 50 percent of the Board of Directors be resident in Palestine has been repealed by the Brokerage Listing By-Law of 09/05/2005.
[341] Interview with advocate Haytham Zuabi, a specialist in contract law.
[342] GILLESPIE K. and others, 'Palestinian Interest in Homeland Investment', Middle East Journal, Vol. 55, no. 2, Spring 2001, p. 237.

Israeli Declaration of Principles in 1993, PADICO was registered under the provisions of the Liberian Business Corporation Act of 1976 as a Liberian limited liability company. PADICO's Memorandum and Articles of Association were prepared in accordance with common practice prevailing in the Middle East region and in conformity with Liberian laws.[343] This company has issued its shares in Palestine, been registered at the PSE and is considered one of the most successful companies in Palestine.

2.4 Insurance transactions

The insurance sector has been badly regulated in the Palestinian territories. The legal framework for insurance transactions in Palestine was a mixture of the Jordanian Law Supervising Insurance Transactions No. 5 of 1965 in force in the WB[344] and the Insurance Companies Deposit Order of 1929 in force in the GS[345], both amended by a list of Israeli military orders such as the Order Supervising Insurance Transactions No. 93 of 1967[346] in the WB and Order on Vehicles Insurance No. 215 of 1968[347], plus their counterparts in the GS. Although they imposed many restrictions on insurance transactions in Palestine, these regulations were very basic and did not properly regulate modern insurance practices. The Arab Insurance Company was allowed to conduct insurance transactions during the 27 years of WBGS occupation, making it an indirect agent of Israeli insurance companies and resulting in high insurance premiums.

The PA did little to change or improve the legal framework of insurance transactions in Palestine and relied on the prevailing mixed legal system to administer the insurance sector in Palestine. The PA allowed other companies to conduct insurance transactions in Palestine but no supervision mechanisms were introduced. Thus, and despite the fact that more than one company worked in the Palestinian insurance market, competition was not evident because of price fixing and the lack of supervision mechanisms.

These conditions persisted until recently when the PA started to improve the legal framework of insurance activities in Palestine by enacting the following laws:

1. The Palestinian Capital Market Authority Law that mandated the CMA to supervise and organize insurance transactions in Palestine. [348]

[343] HANAFI S., 'Between Two Worlds: Palestinian Businessmen from the Diaspora and the Building of a Palestinian Entity', Economic Research Forum of the Arab Countries, Iran and Turkey, Vol. 3, no. 2 1999, p. 21.
[344] Jordan Official Gazette, Issue no. 1826, 01/03/1965, p. 208.
[345] Palestine Official Gazette (Drayton Collection), 22/01/1937, p. 1937.
[346] Proclamations, Orders and Appointments (Israeli Military Orders, West Bank), Issue no. 6, 27/11/1967, p. 215.
[347] Proclamations, Orders and Appointments (Israeli Military Orders, West Bank), Issue no. 11, 17/04/1968, p. 421.
[348] Palestine Official Gazette, Issue no. 53, 28/02.2005, p. 60.

2. The Insurance Law that regulates all insurance transactions and insurance companies in Palestine.[349]

The Insurance Law consists of 191 articles dealing with general definitions, the scope of the Law, the tasks and responsibilities of the PMA, the commitments of insurance companies, rules on special insurance activities, insurance and reinsurance companies, the assets of insurance companies and their obligations, the records and accounts of insurance and reinsurance companies, special rules regarding life insurance, the supervision of insurance companies' activities, foreign insurance companies, merger and the cancellation of licenses, insurance agents, brokers, and investigators, the Palestinian union for insurance companies, vehicle insurance, compensation responsibilities, compensated damages and other issues. This Law repealed all insurance regulations previously in force in Palestine.

The Palestinian Insurance Law restricts foreign investment in the Palestinian insurance sector as it treats foreign companies differently from Palestinian ones. These differences are as follows:

1. **Companies formation:** Article 46 of the Insurance Law stipulates the following:

> *1. No body is allowed to conduct insurance transactions unless it is registered in Palestine as a Palestinian public shareholding company in accordance with Palestinian laws and licensed according to this Law and any other regulations enacted accordingly, or if it is a foreign company registered and licensed to work in Palestine according to this Law and any regulations issued accordingly. Any insurance contract or agreement held by an insurer which contradicts this Article shall be invalid.*
> *2. Fifty-one percent of the insurance companies' securities shall be held at all times by Palestinians.*

This Article means that foreign companies cannot conduct insurance transactions in Palestine from abroad but must only work through a branch registered itself as a company and with the proper license in accordance with the insurance law. This principle was also confirmed in Article 89, which states:

> *Foreign insurance companies are not allowed to conduct insurance transactions in Palestine without a license and must work through a branch registered in Palestine as a company and with reciprocity.*

[349] Palestine Official Gazette, Issue no. 61, 01/12/2005.

The majority of shareholders of insurance companies registered in Palestine must be Palestinian nationals. In other words, companies intending to conduct insurance business in Palestine must (i) be registered in Palestine, (ii) have Palestinians as the majority of its owners and (iii) the country of the foreign company must treat Palestinian companies in the same manner according to the principle of reciprocity. This restriction on foreign investment in insurance activities contradicts Article 4 of the Palestinian Investment Promotion Law that permits foreign investment in all Palestinian economic sectors except those listed in the Article, which does not include insurance. Accordingly, this Law restricts the Palestinian liberalization process and must be amended in light of the liberal approach adopted by the Investment Law.

2. Deposit requirements: Article 62[350] requires foreign and Palestinian insurance companies to deposit a sum of money with the CMA to assure their obligations. However, foreign companies must deposit double the amount required of Palestinian companies. This clause discriminates against foreign companies and puts them at a competitive disadvantage.

3. Employment: Article 70 requires that companies only employee Palestinians but they can employee a foreign specialist if they obtain approval from the head of the insurance administration.

4. Companies' registration: In accordance with Article 90 of the Insurance Law, in addition to the general registration requirements demanded from all companies, the branch of a foreign company shall have a legally registered proxy from the parent company stating that it enjoys the following rights and jurisdictions:

- Issue insurance contracts and their annexes, and that the parent company is responsible for all contracts issued by the branch.
- Represent the parent company in courts, public and non-public bodies in Palestine.
- Receive notes, memos and all other communications sent to the parent company.
- Provide the CMA with information on the parent company's business.
- Pay compensation as a result of insured hazards in accordance with the insurance papers issued on behalf of the parent company.
- Keep files and books related to its business in Palestine and its final accounts in accordance with this Law or any regulations issued accordingly.

[350] Article 62 stipulates that: "Each company which concludes insurance transactions other than those enclosed in Article 61, shall deposit with the CMA an amount of money to cover its obligations before it commences operations. The deposit of foreign companies must be double that of Palestinian companies".

Furthermore, Article 91 demands that the branch of a foreign insurance company in Palestine shall not be permitted to consider any amount in excess of five percent of its annual net earned premiums realized in Palestine as part of the expenses of the head office in return for the administrative and technical services provided to the branch by the head office.

5. The cancellation of license: In addition to Article 100, Article 101 allows the CMA to cancel the license of a foreign insurance company's branch in the following two cases:
1. If the branch did not realize total premiums equal to four times more than the deposit on each conducted insurance activity in Palestine.
2. If the branch did not achieve profits of 7.5 percent on its activities in Palestine for three years in a row on the total yearly premium of each conducted insurance activity.

These different requirements on foreign companies mean that they are not equal to their Palestinian counterparts and Palestinian companies are granted an advantage in the insurance market. These direct and indirect restrictions on foreign insurance companies contradict Palestinian obligations to European rules. Thus, the PA must amend the Insurance Law in a manner compatible with the Palestinian Promotion Law and the obligations of the EU internal market if it intends to join the ENP.

2.5 Real estate transactions

Real estate transactions in the WB are subject to different laws from those of the GS. The laws regulating the lease and ownership of real estate by foreigners in the WB are those inherited from Jordanian rule, while those prevailing in the GS are inherited from the Ottoman and British Mandate periods. We will therefore discuss real estate transactions in the WB and the GS separately.

Real estate transactions in the West Bank

Real estate transactions in the WB are legally subject to the Law on Lease and Sale of Immovable Properties By Foreigners No. 40 of 1953[351] and Law on the Acquisition of Real Estate by Juridical Entities No. 61 of 1953.[352]

A non-Palestinian **natural person** has the right to rent immovable properties in the WB. However, if the total period of the rent exceeds three years,

[351] Jordan Gazette, Issue no. 1134, 16/02/1953, p. 558, As amended by Law no. 12 of 1960 and Law no. 2 of 1962.
[352] Jordan Gazette, Issue no. 1140, 16/04/1953, p. 659. As amended by Law no. 33 of 1955, Law no. 4 of 1957 and Law no. 4 of 1965.

the non-Palestinian should obtain the approval of the Council of Ministers.[353] Furthermore, the ownership of real estate by non-Palestinians is made conditional on obtaining the approval of the Council of Ministers. Ownership of real estate by non-Palestinians is restricted to lands located within the limits of municipalities, planning areas or town basins (urban areas) to the extent sufficient for residence and management of business apart from trading.[354] Non-Palestinians of Palestinian or Arab origin can only own immovable property outside the urban areas to the extent necessary for residence and management of business. In both cases, the approval of the Council of Ministers upon the recommendation of the Minister of Finance should be obtained.[355] Finally, any non-Palestinian who has become an owner of immovable property through inheritance may register such property in his name without being required to secure the approval of the Council of Ministers. He may transfer it to any person, whether a Palestinian or a foreigner, provided that he is one of the heirs of the decedent.[356]

Non-Palestinian **juridical entities** (commercial, industrial, financial, charitable and religious juridical entities) registered in Palestine have the right to own immovable properties within the urban areas to the extent necessary for pursuing their business, apart from trading, after obtaining the approval of the Council of Ministers.[357] All Palestinian and non-Palestinian juridical entities are not allowed to own, in any way possible, immovable properties inside the old city of Jerusalem. However, these juridical entities can, for public interest only, acquire immovable properties within the municipal borders of Jerusalem, excluding the old city, after obtaining the approval of the Council of Ministers in accordance with a recommendation from the Special Committee established for this purpose.[358]

Real estate transactions in the Gaza Strip

Real estate transactions in the GS are subject to the Ottoman Land Code[359] and the Ottoman Law on the Acquisition of Real Estate by Juridical Entities.[360] The Ottoman Land Code did not allow non-Ottoman natural persons to acquire immovable properties in the Ottoman Empire even if they were heirs of an Ottoman decedent as provided by Articles 110 and 111. Furthermore, Ottoman Law on the Acquisition of Real Estate by Juridical Entities did not allow non-Ottoman juridical entities to acquire immovable properties within the Ottoman Empire.

[353] Article 2 of Law no. 40 of 1953.
[354] Article 3 of Law no. 40 of 1953.
[355] Article 4 of Law no. 40 of 1953.
[356] Article 4 of Law no. 40 of 1953.
[357] Articles 5 and 6 of Law no. 61 of 1953.
[358] Article 7 of Law no. 61 of 1953.
[359] RAMADAN A., Collection of Ottoman Laws, 01/06/1925, p. 7.
[360] RAMADAN A., Collection of Ottoman Laws, 01/06/1925, p. 149.

After the occupation of Palestine by the British in 1917, the British authorities enacted the Land Transfer Ordinance of 1920[361] amending Ottoman law on the acquisition of real estate by juridical entities. Article 6 of the Ordinance stipulated that the Head of the Land Department had the right to authorize banking companies operating in Palestine to use immovable properties as a collateral or mortgage. Furthermore, he could allow juridical entities registered in Palestine to acquire immovable properties necessary for pursuing their business and to allow the transfer of lands to juridical entities registered in Palestine.[362] Accordingly, the British Mandate allowed non-Palestinian juridical entities to acquire immovable properties in Palestine but did not alter the Ottoman law that prohibits a non-Palestinian natural person from acquiring immovable properties in Palestine.[363] This raises the question of how the British Mandate could facilitate the establishment of the State of Israel in Palestine if it did not allow the acquisition of land by non-Palestinians. In fact, the British Mandate enacted new immigration and citizenship laws making it easy for foreigners, Jews in particular, to obtain Palestinian nationality and make them eligible to acquire immovable properties in Palestine as Palestinians.[364]

Amendments under Israeli occupation

After the occupation of the WBGS by Israel in 1967, the IMG enacted Military Order relating to Land Transactions No. 25 of 1967[365] in the WB and No. 102 of 1967 in the GS.[366] Article 2 of these orders prohibited anybody (natural or juridical, Palestinian or non-Palestinian) from engaging in real estate transaction without the approval of the IMG, apart from rent contracts of no more than one year of buildings located within the borders of WB municipalities. The IMG then enacted Military Order No. 419 of 1971 Amending Jordanian Law on the Acquisition of Real Estate by Juridical Entities No. 61 of 1953.[367] Article 3 of this Order mandated the Military Commander, and after him the Civilian Commander,[368] to authorize commercial, industrial, financial, charitable and religious juridical entities to acquire immovable property, in public or private, in the WB even if they did not meet the conditions provided by the Jordanian law. With regard to the GS, the Military Commander was granted this authority in accordance with Article 6 of the Land Transfer Ordinance of 1920 explained above.[369]

[361] Drayton's Collection, Issue no. 81, 22/01/1937, 881.
[362] Article 6 of the Ordinance.
[363] The High Court of Justice, Bernard Rosenblatt v. Haifa Lands Register, Case no. 19/47, Palestine Law Report, Vol. II, 1947, p. 499.
[364] The British Mandate imposed 49 acts of legislation relating to immigration and citizenship.
[365] Proclamation, Orders and Appointments (West Bank), Issue no. 2, 15/09/1967, p. 51. As amended by Military Orders no. 232 of 1968, 794 of 1979, 1030 of 1982, and 1054 of 1983.
[366] Proclamation, Orders and Appointments (Gaza Strip), Issue no. 5, 08/02/1968, p. 325. As amended by Military Orders no. 139 of 1967 and 712 of 1981.
[367] Proclamation, Orders and Appointments (West Bank), Issue no. 27, 02/04/1972, p. 1002.
[368] Proclamation, Orders and Appointments (West Bank), Issue no. 57, 21/07/1983, p. 13.
[369] The Military Commander of the GS took over all authorities and powers enclosed in the legislation applicable in GS. Proclamation concerning the Administration of Rule and Justice no. 2 of 1967. Proclamation, Orders and Appointments (Gaza Strip), Issue no. 1, 14/09/1967, p. 5.

The term "in public" means to register the transaction with the regular Land Registration Department, while the term "in private" means the registration of the transaction with the Authorization Record created by the IMG regarding what is called Governmental Properties.[370] Israeli Military Order on Registration of Transactions in Certain Lands No. 569 of 1974 in the WB and No. 524 of 1975 in the GS[371] allowed the IMG to grant immovable properties subject to these orders to anybody and open a special record (Authorization Record) to register these transactions. The IMG defined "anybody" as juridical entities or others not part of a juridical entity.[372] Governmental properties include most of the real estate outside urban areas or land not subject to the Land and Water Settlement Law of No. 40 of 1952[373] at the time of the occupation of the WB.[374]

Accordingly, I assume that during the Israeli occupation, non-Palestinian natural persons could not acquire immovable properties in the WBGS, except if the immovable property was classified as a governmental property. In this case, the IMG could grant the immovable property to non-Palestinians, to Israelis in particular. This explains how Israel justified the ongoing process of building Jewish settlements in the WB. Juridical entities could own immovable properties anywhere in the WBGS if they obtained the approval of the IMG.

The system under the Palestinian Authority

In discussing PA jurisdiction over real estate in the WBGS, the contents of the Israeli-Palestinian Interim Agreement should be taken into consideration. The territorial jurisdiction of the PA regarding land includes Areas A and B, but not Area C in the WB and all of the GS apart from the Jewish settlements. For this reason, the PA has not regulated real estate transactions in areas A and B, giving rise to the question of whether the legal system that prevailed in the WBGS on 19th May, 1994 is still valid in the territories under the PA control.

From a legal viewpoint, the legal framework covering real estate transactions that prevailed on the date of the inauguration of the PA should be valid today. That means that Jordanian law, as amended by Israeli military orders, should be followed in the WB and the Ottoman-British Mandate law, as

[370] Governmental Properties include properties of the Government of Jordan (Egypt), its juridical entities and immovable properties confiscated to create military bases or for public interest. For more see "Military Order no. 59 of 1967 regarding Governmental Properties" in the WB and Military Order no. 423 of 1972 in the GS. Proclamation, Orders and Appointments, Issue no. 5, 51/11/1967, p. 162 in the WB and Issue no. 32, 02/07.1972, p. 2557 in the GS.

[371] Proclamation, Orders and Appointments, Issue no. 35, 25/02/1976, p. 1409 in the WB and Issue no. 39, 15/09/1977, p. 3349 in the GS.

[372] For example, as defined by Military Order no. 25 of 1967 and Military Order no. 59 of 1967 explained above.

[373] Jordan Gazette, Issue no. 1113, 16/06/1952, p. 279.

[374] The legal treatment of real estate in the WB does not include Jerusalem, which became subject to Israeli law in 1981 when Israel annexed the city.

amended by Israeli military orders, should be followed in the GS. Accordingly, the PA is responsible for approving all real estate transactions in its areas, while the IMG is still responsible for approving real estate transactions in Area C.[375]

From a practical viewpoint, although the PA has not legally enacted legislation unifying the legal framework of real estate transactions in areas A and B, it has adopted the following practices with regard to foreign acquisition of real estate in these territories:[376]

(i) With regard to the lease of immovable property by non-Palestinians, they (natural or juridical) can rent houses without restrictions but if the non-Palestinian intends to rent land, he/she must obtain the approval of the Land Authority.

(ii) A non-Palestinian natural person may acquire real estate necessary for his housing or business in PA areas after obtaining the approval of the Land Authority.

(iii) For the acquisition of real estate to pursue their business, non-Palestinian juridical entities must obtain the approval of the Ministry of Justice and the Land Authority if they intend to own real estate in PA areas. Palestinian juridical entities must obtain the approval of the Ministry of Justice to acquire such real estate.

(iv) The acquisition of real estate by non-Palestinian natural persons and juridical entities (Palestinian or not) for more than the amounts above (i.e. for investment purposes), should obtain the approval of the PA Cabinet pursuant to a recommendation from the Land Authority.

These measures indicate that the PA has ignored the legal framework valid in the WBGS regarding real estate transactions and has created its own system without any legal support. This virtual system is, to some extent, liberal if compared with the system prevailing in Jordan. For example, the lease of buildings in Palestine by non-Palestinians is free of all restrictions while in Jordan it is conditional on the principle of reciprocity and the approval of the Head of the Land Department or the Ministry of Finance, whichever the case might be. Furthermore, PA practices, unlike Jordanian law, do not limit the size of the real estate or distinguish between urban and rural areas and apply the same rules and procedures to both.

---

[375] Interview with advocate Abdullah Jallad, a specialist in land law.
[376] Interview with Mr. Samer Kokhon of the Land Registration Department in Nablus, West Bank.

The Palestinian Legislative Council aimed to regulate real estate transactions in Palestine with a draft land law that was sent to the PA President for ratification on 30 September, 1997.[377] The main features of this draft are as follows:

(i) Israelis are not allowed to acquire real estate in Palestine and all transactions concluded before the entry into force of this law are null and void.
(ii) Non-Palestinian Arabs (natural or juridical) are not allowed to acquire real estate in Palestine except through inheritance. Non-Palestinians can own real estate in accordance with the principle of reciprocity with the approval of the PA Cabinet.
(iii) The PA Cabinet, through ministerial decree, may allow non-Palestinians to acquire real estate in urban areas for the purpose of economic development or Palestinian public policy.

The President of the PA has not approved this draft and I think it unlikely that he would do so since this draft law is inconsistent with the Palestinian-Israeli Agreements[378] and a liberal economic policy.

2.6 Other capital transactions

During the occupation of the WBGS, the Israeli authorities made residents and non-residents subject to a strict system of control with regard to financial transactions involving Israeli currency or other foreign currencies and financial instruments. For example, Military Order No. 973 of 1982 on Money Entering the West Bank[379]and Military Order No. 973 of 1982 on Money Entering the Gaza Strip[380] prohibited residents and non-residents from bringing local and foreign banknotes, coins, credit cards, other means of payment and gold into the WBGS without permission from the Head of the ICA.[381] However, residents in the GS were allowed to bring with them from outside, in any form, up to JD 400 without permission,[382] while WB residents were allowed to bring with them from outside, in any form, up to JD 500 every two months without permission.[383]

---

[377] This draft was prepared as a direct result of the Israeli Government's announcement of their intentions to build a settlement on Abu Ghnaim mountain in Jerusalem. For more see, SAFIAN A., 'Can Arabs Buy Land in Israel', The Middle East Quarterly, Vol. 1, December 1997, p. 4.
[378] PA has no powers over land in Area C since it is one of the final negotiation matters.
[379] Proclamation, Orders and Appointments (West Bank), Issue no. 55, 05/05/1983, p. 5. As amended by Military Orders no. 1070 of 1983, no. 1218 of 1988, no. 1243 of 1988, and no. 1272 of 1989.
[380] Proclamation, Orders and Appointments (Gaza Strip), Issue no. 57, 28/02/1984, p. 6273. As amended by Military Orders no. 805 of 1983, no. 940 of 1988, no. 954 of 1988, and no. 981 of 1989.
[381] Article 2 of the orders.
[382] Proclamation, Orders and Appointments (Gaza Strip), Issue no. 89, 08/05/1991, p. 9851.
[383] Proclamation, Orders and Appointments (West Bank), Issue no. 145, 02/1993, p. 1133.

Also, Article 2 of Military Order Relating to Currency Control No. 952 of 1981 in the West Bank[384] and No. 719 of 1981 in the Gaza Strip[385] prohibited residents from concluding any financial transaction in foreign currency within the WBGS or outside without the approval of the IMG. The orders did not allow non-residents, except tourists, from concluding any financial transaction in the WBGS or outside it with regard to assets inside the WBGS without the approval of the IMG. Article 3 of these orders prohibited residents and non-residents from carrying out of the WBGS a sum of money without the approval of the IMG. Finally, Article 6 of these orders also prohibited residents from possessing foreign currencies or any other foreign financial papers without the approval of the IMG.[386]

The Interim Agreement transferred all monetary and financial issues to the PA, in particular to the PMA. In accordance with the Paris Protocol, the PMA assumed responsibility for the regulation and supervision of foreign exchange transactions within the WBGS and with the rest of the world.[387] Since its establishment, the PA has adopted a liberal financial policy by repealing all Israeli restrictions on the free movement of capital between the WBGS and the rest of the world. The PA, in accordance with a recommendation from the PMA, enacted Decision No. 20 of 1998 concerning the Revocation of some Israeli Military Orders in the Gaza Strip.[388] This Decision explicitly repealed all Israeli military orders restricting the free movement of capital to and from the GS. The PA did not do the same in the WB because of the complexity of PA jurisdiction over Area C, which makes it difficult for the PA to enforce its civil powers in the WB. As a result, Israeli military orders regarding the transfer of money to and outside Palestine remain valid today at Israeli/international exit points. For example, Palestinians must declare to the Israeli authorities any sums of money in excess of US $2000.

It should be concluded that the PMA has, in practice, fully liberalized the inflow and outflow of capital between the WBGS and the outside world. Residents and non-residents are free to bring into and transfer out of the GS any foreign currencies they wish for any reason. Also, residents and non-residents have the right to conclude all financial transactions inside the WBGS or outside using any convertible currency. The PMA has adopted such an open policy in order to help Palestinian financial institutions to integrate into the global financial system and to guarantee the inflow of foreign currencies badly needed for Palestinian economic and financial reconstruction.[389]

[384] Proclamation, Orders and Appointments (West Bank), Issue no. 53, 21/02/1983, p. 25. As amended by Military Orders no. 1215 of 1988, no. 1237 of 1988, and no. 1395 of 1993.
[385] Proclamation, Orders and Appointments (Gaza Strip), Issue no. 52, 24/01/1983, p. 5595. As amended by Military orders no. 817 of 1983 and no. 949 of 1988.
[386] For more see, GHARAIBEH F., The Economies of the West Bank and Gaza Strip (Colorado: Westview Press, 1985) p. 107.
[387] Article 4 (6) of Paris Protocol.
[388] Palestine Official Gazette, Issue no. 23, 08/06/1998, p. 60.
[389] PMA, Economic and Financial Developments in Palestine (in Arabic) (Ramallah: PMA, 2002) p. 10.

V. CONCLUSION

One of the most important goals of the EU-Mediterranean Association Agreements is to establish a free trade area between the 25 EU member states and ten Mediterranean countries. The free trade area necessitates that Mediterranean countries reform their legal systems in a manner compatible with the economic requirements of the association agreements. In other words, the extent of the Mediterranean countries' legal obligations is derived from the level of liberalization demanded by the association agreements. The EU-PLO only calls for the liberalization of goods and payments, excluding the supply of services, right of establishment and the free movement of capital. Furthermore, the EU-PLO calls for the regulation of competition rules, intellectual property rights and public procurements.

In light of the current legal system prevailing in Palestine and the legal jurisdiction of the PA, the accomplishment of the free trade area with the EU will not be as easy as envisaged. The existing Palestinian legal system is dual and complex. The legal system in the WB is based on the Jordanian continental Latin legal system, while that in GS is based on the British Mandatory common Anglo-Saxon legal system. Moreover, it is a combination of laws that date back as far as the Ottoman period. Also, the PA legal and, thus, legislative jurisdiction is not exclusive. The PA has limited powers over economy and finance in Palestine. The Paris Protocol assumed that the PA would hold full powers and responsibilities for all economic activities with a local dimension, such as banks and other financial institutions, financial markets and insurance activities. Yet, the Israeli Military Administration has retained powers and responsibilities for all economic activities with an international dimension, such as the issuance of a Palestinian currency, import and import tax policy and indirect taxation. There is therefore a clear contradiction between the legal obligations of the PA as provided in the EU-PLO and actual legislative capacity as provided in the Palestinian-Israeli agreements.

Nevertheless, the implementation of the free trade area with the EU by the PA has gone beyond its jurisdiction defined in the agreements signed with Israel. For example, the PA enacted the Palestinian Standards and Measurement Law and is in the process of developing its regulatory system regarding customs and tax laws under the Customs and Excise General Directorate of the Ministry of Finance. The PA also endorsed the new EU Protocol on rules of origin in July 2003 allowing the extension of the Pan-European system of cumulation of origin to Palestine. Most of these measures and regulations are outside the scope of the PA legal jurisdiction. Furthermore, the PA has, in practice, liberalized all

current transactions under its jurisdiction in a manner compatible with the EU-PLO. Accordingly and in order to fulfill its legal obligations under the EU-PLO's free trade area, Palestine must enact a foreign exchange regulation translating the virtual current convertibility to legal convertibility.

Although inconsistent with best international practices, the PA has completed the process of drafting a competition law. Sound implementation of the EU-PLO requires the amendment and prompt enactment of a modern competition law. The draft Industrial Property Protection Law and the Copyright and Related Rights Law must be adopted by the PLC as soon as possible in order to facilitate and foster the implementation of the free trade area. The General Procurement Law enacted by the PA fails to comply fully with best international and European practices and norms and the PA must amend it in a manner compatible with the general requirements of the association agreement.

As regards Palestinian obligations towards the EU internal market, the ENP demands that Palestine liberalize not only the free movement of goods but also current payments, capital transactions and the right to provide services and establishment. In a big bang approach, the PA liberalized all capital transactions under its jurisdiction, achieving full convertibility, but this was achieved in practice rather than by a legislative act. The PMA allowed licensed banks to conduct all banking and credit transactions without discrimination between resident and non-resident. Moreover, the PMA liberalized the inflow and outflow of capital for visible, invisible or any other reason. In 1998, the PA started to give legal force to its free movement of capital by enacting the Investment Promotion Law. This Law reiterates the free movement of FDI and all transactions connected to it and opened the majority of Palestinian economic sectors up to foreign investment. These steps mean that the PA has adhered to the obligation to open capital accounts to EU capital and investments.

Furthermore, the enactment of the Banking Law of 2002 reinforced the free movement of all banking and credit transactions. The Capital Market Authority Law and the Securities Law of 2004 have adopted an open policy in administrating the PSE. This policy does not distinguish between residents and non-residents and there are therefore no restrictions on foreign investment in the PSE. The only restriction on foreign investment in the PSE is related to brokerage firms. The Securities Listing Instructions require that brokerage firms applying for membership in the PSE must be established and registered in Palestine. The Insurance Law, however, has not been as open as expected and discriminates between Palestinian and foreign insurance companies in matters like the formation of companies, deposit requirements, employment,

companies' registration and the cancellation of licenses. These restrictions are incompatible with the Palestinian Investment Promotion Law that allows foreign investment in most economic sectors, including insurance.

The legal framework of real estate transactions in Palestine is old, complex and is incompatible with best international practices because it is very restrictive. Therefore, the PA has ignored it and instead created new and more liberal practices of its own. Although these practices are liberal, they are not supported by a legislative act. The PA must therefore complete the liberal policy regarding real estate transactions with legislation enacted by the PLC in order to comply with the EU internal market requirement of free movement of capital.

ABED George, 'Trade Liberalization and Tax Reform in the Southern Mediterranean Region', IMF Working Paper, April 1998.

ABUSALQAN J., Money and Finance in Palestine (Ph.D. Thesis, Erlangen-Nurnberg University, Germany, 2001).

ALONSO-GAMO Patricia, 'Adjusting to New Realities: MENA, The Uruguay Round, and the EU-Mediterranean Initiative', IMF Working Paper, January 1997.

ANAFI S., 'Between Two Worlds: Palestinian Businessmen from the Diaspora and the Building of a Palestinian Entity', Economic Research Forum of the Arab Countries, Iran and Turkey, Vol. 3, no. 2 1999.

ARNON A. and others, The Palestinian Economy: between Imposed Integration and Voluntary Separation (Koln: Brill, 1997).

AUGI D., and BARATELLA D., 'New Developments in the European Court of Justice's Case Law on the Direct Applicability of Community Directives', The European Legal Forum, No. 2, 2000/01.

BARNETT S., 'Monetary Policy in the West Bank and Gaza Strip in the Absence of a Domestic Currency'. In: KANAAN O. and others, The Economy of the West Bank and Gaza Strip: Recent Experience, Prospects, and Challenges to Private Sector Developments (Washington DC: IMF, 1998).

BURROWS F., Free Movement in European Community Law (Oxford: Clarendon Press, 1987).

CASHIN E., 'The Investment Service Directive: An Overview', Journal of International Banking Law, Vol. 4, 1997.

CHATTERJEE C., 'The EC Second Banking Directive: Relations with Third Countries', Journal of International Banking Law, Vol. 12, 1995.

CORCORAN A. and HART T., 'The Regulation of Cross-Border Financial Services in the EU Internal Market', Colombia Journal of European Law, Spring, 2002.

CREMONA M., 'Free Movement of Persons and Services in Wider Europe'. In: XUEREB P. (ed.), The European Union and the Mediterranean: Closer Relations in the Wider Context (Malta: European Documentation and Research Centre, 1998).

DABOUR N., 'Prospects for and Problems of the Palestinian Economy in the West Bank and Gaza Strip', Journal of Economic Cooperation among Islamic Countries, Vol. 19, No. 2, 1999.

DANIEL G., The Ottoman Empire and Early Modern Europe (Cambridge: Cambridge University Press, 2002).

DERMINE J., European Banking in the 1990s, 2nd edition (Oxford: Blackwell Publishers, 1993).

DESSUS S. and others (eds.), Towards Arab and Euro-Med. Regional Integration

(Paris: OECD, 2001).
DIWAN I. and SHABAN R. (eds.), Development under Adversity: The Palestinian Economy in Transition (Washington DC: The World Bank, 1999).
DUMAS J., Fiscal Leakage in the West Bank and Gaza Strip, The European Commission, June 1999.
EDWARD D., 'Establishment and Services: An Analysis of the Insurance Cases', European Law Review, Vol. 12, 1987.
EDWARDS R., International Monetary Collaboration (New York: Transnational Publishers, 1985).
EECKHOUT P., The European Internal Market and International Trade: A legal Analysis (Oxford: Clarendon Press, 1994).
EHLERMANN C., 'The Internal Market Following the Single European Act', Common Market Law Review, Vol. 24, 1987.
EHLERMANN Claus-Dieter, 'The International Dimension of Competition Policy', Fordham International Law Review, Vol. 17, 1994.
EINBLATT A., 'Sovereignty and Economic Development: The Case of Israel and Palestine', The Economic Journal, No. 111, June 2001.
EINHORN T., 'The Need for a Rule-Oriented Israeli-Palestinian Customs Union: The Role of International Trade Law and Domestic Law', Netherlands International Law Review, Vol. XLIV, 1997.
El-ERIAN M. and TAREQ S., 'Economic Reform in the Arab Countries: A Review of Structural Issues'. In: EL-NAGGAR S. (ed.), Economic Development of the Arab Countries (IMF: Washington DC, 1993).
EMMERT Frank., 'The Draft Constitution: Issues and Analyses: Introducing EU Competition Law and Policy in Central and Eastern Europe: Requirements in Theory and Problems in Practice', Fordham International Law Journal, Vol. 27, 2004.
European Commission, Institutional Arrangements for the Regulation and Supervision of the Financial Sector, January 2000.
EVANS J., 'Current and Capital Transactions: How the Fund Defines Them', IMF Finance and Development Journal, Vol. 5, No. 3, 1968.
FARES, Samer and Feras Milhem, Philosophy of Legislation in Palestine (Birzeit University, Institute of Law- 1998).
FAWZY S. and GALAL A. (eds.), Partnership for Development: New Roles for Government and Private Sector in the Middle East and North Africa (Washington DC: The World Bank 1999).
FERRARINI G., 'The European Regulation of Stock Exchanges: New Perspectives', Common Market Law Review, Vol. 36, 1999.
FERRARINI G., Prudential Regulation of Banks and Securities Firms: European and International Aspects (The Hague: Kluwer Law International, 1995).
FIDLER D., 'Foreign Private Investment in Palestine Revisited: An Analysis of the

Revised Palestinian Investment Law', Case Western Reserve Journal of International Law, Vol. 31, no. 1-3, 1999.
FINLAYSON J. and ZACHER M., 'The GATT and the Regulation of Trade Barriers: Regime, Dynamic and Functions', International Organization, Vol. 35, No. 4, Autumn 1981.
FISHER S. and others, 'Economic Developments in the West Bank and Gaza since Oslo', The Economic Journal, no. 111, June 2001.
FOLSOM Ralph and other (ed.), European Union Law after Maastricht (The Hague: Kluwer Law International, 1996.
FORWOOD N., and CLOUGH M., 'The Single European Act and Free Movement: Legal Implications of the Provisions for the Completion of the Internal Market', European Law Review, December 1986.
GAMO-ALONSO P. and others, West Bank and Gaza Strip: Economic Developments in the Five Years of Oslo (Washington DC: IMF, 1999).
GASIOREK Michael, 'Report on the Situation of Customs, Taxation and Rules of Origin in the Countries of the Mediterranean Area'. In: MONJO Eduardo (ed.) Regional Program for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed market) (Maastricht: European Institute of Public Administration, 2004).
GHARAIBEH F., The Economies of the West Bank and Gaza Strip (Colorado: Westview Press, 1985).
GHESQUIERE Henri, 'Impact of European Union Association Agreements on Mediterranean Countries', IMF Working Paper, August 1998.
GILLESPIE K. and others, 'Palestinian Interest in Homeland Investment', Middle East Journal, Vol. 55, no. 2, Spring 2001.
GRAIG Paul and DE BURCA Grainne., EC Law: Texts, Cases and Materials (Oxford: Clarendon Press, 1995).
HAKURA F., EU-Mediterranean and Gulf Trade Agreements (Bembridge: Palladian Law Publishing Ltd., 1999).
HAMED O., Current Monetary Arrangements between Israel and the WBGS and Possible Alternatives, The European Commission, March 1999.
HANSEN J., Full Circle: 'Is there a Difference between the Freedom of Establishment and the Freedom to Provide Financial Services', European Business Law Review, Vol. 11, No. 2, 2000.
HARDY D. and others, 'Addendum. Implementation of the European Union Association Agreements'. In: IQBAL Z. (ed.), Macroeconomic Issues and Policies in the Middle East and North Africa, (Washington D.C.: IMF, 2001).
HARRIS L., 'Money and Finance with Undeveloped Banking in the Occupied

Territories'. In: ABED G. (ed.), The Palestinian Economy: Studies in Development under Prolonged Occupation (London: Routledge, 1988).

HARTLEY T., The Foundation of European Community Law, 3rd edition (Oxford: Clarendon Press, 1994).

HATZOPOULOS V., 'Recent Developments of Case Law of the ECJ in the Field of Services', Common Market Law Review, Vol. 37, 2000.

HOEKMAN Bernard., 'Deep Integration, Nondiscrimination, and Euro-Mediterranean Free Trade', World Bank Working Paper, 2002.

HOEKMAN Bernard., 'Free Trade and Deep Integration: Antidumping and Antitrust in Regional Agreements', World Bank Working Paper, April 1998.

HOEKMAN, Bernard and DJANKOV Simeon., 'Catching UP with Eastern Europe? The European Union's Mediterranean Free Trade Initiative', Policy Research Working Paper: The World Bank, No. 1562, January 1996.

HOEKMAN, Bernard and DJANKOV Simeon., 'Effective Protection and Investment Incentives in Egypt and Jordan During the Transition to Free Trade with Europe', World Development, Vol. 25, No.2 1997.

HONRADO Filipe, 'Comparative Study of Answers to Questionnaires Supplied by the Mediterranean Partners Workshop on: Intellectual Property Rights'. In: MONJO Eduardo (ed.) Regional Program for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed market) (Maastricht: European Institute of Public Administration, 2004).

IMF, 'West Bank and Gaza Strip Adopts Outward-Oriented Economic Strategy', IMF's Survey, January 22, 1996.

IQBAL Z. (ed.), Macroeconomic Issues and Policies in the Middle East and North Africa, (Washington D.C.: IMF, 2001).

JACKSON J., World Trade and the Law of GATT (Indianapolis: The Bobbs-Merrill Company, 1969).

JOZA R., The Legal Framework of Palestine Stock Exchange (MA Thesis (in Arabic), Birzeit University, Palestine, 2000).

KANAAN O. and others., The Economy of the West Bank and Gaza Strip: Recent Experience, Prospects, and Challenges to Private Sector Developments (Washington DC: IMF, 1998).

KANAAN O., 'The Peace Process, Uncertainty and Private Investment in the West Bank and Gaza Strip', Middle East Policy, Vol. VI, no. 2, October 1998.

KANAFANI N., Association of Palestine with the European Union: The Present Framework and the Way Ahead (Ramallah: Palestine Economic

Policy Research Institute, April 2000).
KANAFANI N., Trade Relations between Palestine and Israel: Free Trade Area or Customs Union? (Ramallah: Palestinian Economic Policy Research Institute (MAS), December 1996).
KENT Penelope, Law of the European Union (London: Financial Times Pitman Publishing, 1996).
KESSLER V., Palestinian's External Trade Performance under the Paris Protocol: Hopes and Disillusions, The European Commission, June 1999.
LANDSMEER A., 'Capital Movements: on the Interpretation of Article 73b of the EC Treaty', Legal Issues of Economic Integration, Vol. 27, NO. 2, 2000.
LANDSMEER A., 'Movement of Capital and Other Freedoms', Legal Issues of Economic Integration, Vol. 28/1, 2001.
LOMNICKA E., 'The Home Country Control Principle in Financial Services Directives and Case Law', European Business Law Review, Vol. 11, No. 9/10, 2000.
LOWE Philip, 'Current Issues of EU Competition Law: The Competition Enforcement Regime', Northwestern Journal of International Law and Business, Vol. 24, 2004.
MAESTRIPIERI C., 'Freedom of Establishment and Freedom to Supply Financial Services', Common Market Law Review, Vol. 10, 1973.
MARIA Alberto Santa, EC Commercial Law (The Hague: Kluwer Law International, 1996).
MILHEM F., The Legal Framework for Investment in the West Bank and Gaza Strip (MA thesis (in Arabic), Birzeit University, Palestine, 2000).
MINASI Nicola, 'The Euro-Mediterranean Free Trade Area and its Impact on the Economies Involved', Jean Monnet Working Papers in Comparative and International Politics, No.16, October 1998. http://aei.pitt.edu/archive/00000407/01/jmwp16.htm
MOLKNER and ABDUL-HAMID R., The Legal Structure of Foreign Investment in the West Bank and Gaza Strip (Jerusalem: Israeli-Palestinian Center for Research and Information (IPCRI), 1994).
MOLLE W., The Economics of European Integration, 2nd Edition (Adershot: Dartmouth, 1994).
MONJO Eduardo (ed.)., Regional Program for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed market) (Maastricht: European Institute of Public Administration, 2004).
MONTEIL P. and REINHART C., 'Do Capital Controls and Macroeconomic Policies Influence the Volume and Composition of Capital Flows? Evidence from the 1990s', Journal of International Money and Finance, Vol. 18, 1999.

MOREAU Olivier, 'Comparative Study of the Regulation of Public Procurement in the Mediterranean Partners and in Four EU Member States'. In: MONJO Eduardo (ed.) Regional Program for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed market) (Maastricht: European Institute of Public Administration, 2004).

NAQIBF., 'Economic Relations between Palestine and Israel during the Occupation Era and the Period of Limited Self-Rule', Economic Research Forum for the Arab Countries, Iran and Turkey, 2000. http://www.erf.org.eg/uploadpath/pdf/2015%20Naquib%20website.pdf

NICOLAIDES Phedon, 'Competition Policy: A Review of Competition and Liberalization Measures in the MEDA Countries'. In: MONJO Eduardo (ed.) Regional Program for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed market) (Maastricht: European Institute of Public Administration, 2004).

NIELSEN P., Services and Establishment in European Community Banking Law (Denmark: Association of Danish Lawyers and Economics, 1994).

NORTON J. and others, International Banking Operations and Practices: Current Developments (London: Graham & Trotman, 1994).

NSOULI S. and RACHED M., 'Capital Account Liberalization in the Southern Mediterranean Region', IMF Paper on Policy Analysis and Assessment, September 1998.

OTTOW A., 'An Internal Insurance Market before the Turn of the Century', Common Market Law Review, Vol. 29, 1992.

OUVRARD Francoise., 'Report on the Position of Mediterranean Countries in the Free Movement of Goods'. In: MONJO Eduardo (ed.) Regional Program for the Promotion of the Instruments and Mechanisms of the Euro-Mediterranean Market (EuroMed market) (Maastricht: European Institute of Public Administration, 2004).

Palestine Securities Exchange, About the Palestine Securities Exchange (Nablus, PSE Public Relations Office, 1997).

Palestinian Monetary Authority, Economic and Banking Developments in 2000-2001, March 2002.

Palestinian Monetary Authority, Economic and Financial Developments in Palestine (in Arabic) (Ramallah: PMA, 2002).

Palestinian Monetary Authority, The Sixth Annual Report, 2000.

PETERS M., 'Capital Movement and Taxation in the EC', The EC Tax Review, Vol. 1, 1998.

RAJA S., From Occupation to Interim Accord: Israel and the Palestinian Territories (The Hague: Kluwer Law International, 1997).

REIFFERS Jean-Louis and TOURRET Jean-Claude., 'Investing in a Euro-

Mediterranean Free Trade Area', Institute de la Mediterranee, February, 2000.
ROBERT E., Islamic Law in Palestine and Israel: A History of Survival of Tanzimat and Shari'a in the British Mandate and Jewish State (Leiden: Brill, 1978).
ROBINSON G., 'The Politics of Legal Reform in Palestine', Journal of Palestine Studies, Vol. XXVII, no. 1, Autumn 1997.
SACERDOTI G., 'The Source and Evolution of International Legal Protection for Infrastructure Investments Confronting Political and Regulatory Risks', Center for Energy, Petroleum and Mineral Law and Policy, Vol. 5, May 1999 - January 2000. http://www.dundee.ac.uk/cepmlp/journal/
SAFIAN A., 'Can Arabs Buy Land in Israel', The Middle East Quarterly, Vol. 1, December 1997.
SAMARA A., 'Globalization, the Palestinian Economy, and the Peace Process', Journal of Palestine Studies, Vol. XXIX, no. 2, Winter 2000.
SCHIFF M., Trade Policy and Labor Services: Final Status Options for the West Bank and Gaza (Washington DC: The World Bank, 2002).
SCHOEMNMAKER D., 'Internationalization of Banking Supervision and Deposit Insurance', Journal of International Banking Law, Vol. 3, 1993.
SEBBA I., 'The Doctrine of Direct Effect: a Malignant Disease of Community Law', Legal Issues of European Integration, 1995/2.
SHIHATA I., Legal Treatment of Foreign Investment: The World Bank Guidelines (London: Martinus Nijhoff Publishers, 1993).
SMULDERS B., 'Harmonization in the Field of Insurance Law Through the Introduction of Community Rules of Conflict', Common Market Law Review, Vol. 29, 1992.
STRIVENS R., 'The Liberalization of Banking Services in the Community', Common Market Law Review, Vol. 29, 1992.
The World Bank, West Bank and Gaza: Creating a Framework for Foreign Direct Investment (Washington DC: the World Bank, 1995).
TILLOTSON John., European Commercial Law, 2ed Edition (London: Cavendish Publishing Limited, 1996).
TISON M., 'What is "General Good" in EU Financial Service Law?', Legal Issues of Economic Integration, 1997/2.
United Nations, The Partition of Palestine 29 November 1947: An Analysis (Beirut: Institute for Palestine Studies, 1967).
USHER J., 'Capital Movement and the Treaty on European Union', Yearbook of European Law, Vol. 12, 1992.
USHER J., The Law of Money and Financial Services in the European Community (Oxford: Clarendon Press, 1994).

VALDIVIESO R. and others (eds.), West Bank and Gaza: Economic Performance, Prospects, and Policies (Washington DC: IMF, 2001).
VALDIVIESO R. and others, West Bank and Gaza: Economic Performance, Prospects and Policies (Washington D.C.: IMF, 2001).
VIPOND P, 'The Liberalization of Capital Movements and Financial Services in the European Single Market: A Case Study in Regulation', European Journal of Political Research, Vol. 19, 1991.
VON ALLMEN U. and FISCHER F., 'The Choice of Future Exchange Rate Regime in the West Bank and Gaza'. In: VALDIVIESO R. and others (eds.), West Bank and Gaza: Economic Performance, Prospects, and Policies (Washington DC: IMF, 2001).
WASSERSTEIN B., The British in Palestine: The Mandatory Government and the Arab-Jewish Conflict (London: Royal Historical Society, 1978).
World Trade Organization, The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts (Cambridge: Cambridge University Press, 1999).
XUEREB P. (ed.), The European Union and the Mediterranean: Closer Relations in the Wider Context (Malta: European Documentation and Research Centre, 1998).
ZALLIO Franco., 'Deep Integration, Euro-Med Free Trade and the WTO 2000 Negotiations', Arab Economic Forum Working Paper, No. 2014, 2000.
ZARROUK J., 'Linkages between Euro-Mediterranean and Arab Free Trade Agreements'. In: DESSUS S. and others (eds.), Towards Arab and Euro-Med. Regional Integration (Paris: OECD, 2001).
ZAVADJIL M. and others., Recent Economic Developments, Prospects, and Progress in Institution Building in the West Bank and Gaza Strip (Washington DC: IMF, 1997).