



Palestine Economic Policy Research Institute

The Implementation of
Labor-related Articles in the
Protocol on Economic Relations
between the Government of
Israel and the PLO
A Critical Assessment

By Leila Farsakh



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November 1999



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Foreword

The production of applied research studies to enhance the socio-economic policy making process in Palestine is one of the most important goals of MAS.

The subject of labor in particular is given a high priority, with the aim of providing technical support to improve the elaboration of appropriate strategies and programs.

This study of the labor-related articles in the Protocol on Economic Relations is of great importance at this crucial stage when final settlement negotiations are taking place that will shape future relations between Israel and Palestine. The Israeli labor market currently employs 120,000 Palestinian workers, constituting 22% of the Palestinian labor force of the West Bank and Gaza Strip. It is anticipated that reliance on the Israeli labor market will continue for some time to come due to the restrictions imposed on the Palestinian economy during the past three decades of occupation and the inability to create sufficient new jobs to absorb the increase in the labor force. Also, alternative job opportunities in Arab countries have declined since the Gulf War. At the same time, the demand for Palestinian workers in the Israeli economy is also expected to persist as it is costly (not only in economic terms) to substitute Palestinian workers with imported foreign ones.

This critical review of the labor-related articles in the Economic Protocol and their implementation during the interim period leads to some general conclusions regarding future agreements, namely the importance of clarity. Any potential ambiguity leaves room for exploitation by the stronger party. Moreover, even when the terms are clear, agreements fail to be implemented if they do not include effective international mechanisms to ensure compliance and if national policies and strategies are not translated into actual plans and programs.

The study also makes a number of specific conclusions relating to the Palestinian labor force in Israel. First, the importance of clear national policies with well-defined goals. Second, the necessity of a defined role for the relevant Palestinian bodies in the organization and coordination of Palestinian labor in Israel and in the protection of workers' rights. Third, the need for speedy Palestinian labor legislation and the establishment of

the institutional structures required to enable the transfer of workers' deductions currently held in Israel. Fourth, the investment of these funds in Palestinian institutions for the protection and guarantee of workers' rights and to benefit the Palestinian national economy.

MAS hopes that this study will assist Palestinian policy makers to adopt the appropriate policies and programs. MAS would like to thank all the organizations and individuals who assisted with this study, whether by providing information or comments. MAS hopes to continue to receive feedback through the evaluation form provided with this publication.

I would like to express my deepest thanks and appreciation to the researcher, Leila Farsakh. Thanks are also due to the Technical Assistance Trust Fund (PECDAR) for their financial support.

Ghania Malhis
Director

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Publication Standards at the Palestine Economic Policy Research Institute-MAS

The Palestine Economic Policy Research Institute –MAS- engages in the publication of applied research papers and studies related to the Institute’s program in the area of economics and social science and conducted by full or part time researchers.

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4. The initial draft of the study is reviewed by the scientific committee for objective content-related amendments to be added to the second draft.
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List of Abbreviations

CAC	Joint Civil Affairs and Cooperation Committee
CAP	Protocol on Civil Affairs
DATA	Data Studies and Consultation
DOP	Declaration of Principles
EP	Protocol on Economic Relations
ICBS	Central Bureau of Statistics of Israel
ILO	International Labor Organization
IMF	International Monetary Fund
JEC	Joint Economic Committee
JLC	Joint Labor Committee
MOF	Palestinian Ministry of Finance
NII	Israeli National Insurance Institute
NIS	New Israeli Shekel
PGFTU	Palestinian General Trade Union
PNA	Palestinian National Authority
PRS	Protocol of Redeployment and Security
UNCTAD	United Nations Conference on Trade and Development
UNSCO Territories	United Nations Special Coordinator in the Occupied
UNRWA	United Nations Relief Works Agency
US	United States
WBGS	West Bank and Gaza Strip

Abstract

The Protocol on Economic Relations (EP) between Israel and the PNA, signed in Paris in 1994, sets out the framework for economic relations between the economies of Israel and the West Bank and Gaza Strip (WBGS) in the interim period pending final status negotiations. The question of labor flows to Israel was central to the economic negotiations and therefore to the successful implementation of the agreement. The Israeli labor market has been a central employment outlet for more than one third of the WBGS labor force since the 1970s. It has been a major binding factor linking the Palestinian economy to that of Israel.

The EP covers three central issues relating to labor flows to Israel. These concern the access of workers to the Israeli labor market, the regulation of labor flows and the social security contributions made by legal workers employed in Israel. The access of workers is dealt with in Article VII which establishes that “normality of labor movements” shall be maintained in the interim period. The EP also gives the Palestinians the right to participate in the regulation of labor flows and to reclaim social contributions made by workers to the Palestinian economy.

In practice, the labor-related articles in the EP have only partially been implemented. This is largely because security priorities, as defined unilaterally by Israel, were given precedence over all economic priorities. The normality of labor movements has been maintained only in so far as Israel determined that it was desirable politically and compatible with security. Israeli policies of closure and permits halted the access of Palestinian workers to Israel on more than 400 days between 1994-1998. During this period, unemployment soared in the WBGS. By 1998, labor flows to Israel had regained their previous peak but the majority of workers were now from the West Bank. Reliance on the Israeli labor market has changed in character over the past five years, but not in depth.

Some progress has been made as regards the repayment of deductions made from the wages of legal Palestinian workers. In accordance with the terms of the agreement, income and health taxes have been transferred to the Palestinian economy. However, pension and National Insurance deductions are still being held by Israel pending the establishment of the Palestinian institutions required. Speedy action needs to be taken in this

regard to ensure that the Palestinian economy and workers benefit directly from their savings.

Labor relations will continue to be important for both the Palestinian and the Israeli economies. However, they need to be based on economic priorities rather than on security as defined unilaterally by one side. The only alternative to Palestinian reliance on the Israel labor market is the growth of the Palestinian economy and exports. This, in turn, requires free access to the outside world and real economic cooperation with neighboring and global economies.

1. Introduction

Palestinian labor flows to Israel have been the cornerstone in the economic dependency that has evolved between the West Bank and the Gaza Strip (WBGS) and Israel. Between 1970-1993, the Israeli labor market absorbed more than one third of the WBGS labor force. The income generated by these workers helped to finance the WBGS trade deficit with Israel during the years of occupation. While the economic base of the WBGS gradually weakened, labor flows to Israel allowed for improvements in standards of living and income distribution in these areas.

With the advent of the peace process, however, labor flows no longer appear to exert the same importance as a link binding the Palestinian and Israeli economies. Israel closed its borders with the WBGS unilaterally and without prior notice for more than 400 days between 1993-1997. The number of workers going to Israel dropped from its peak of 115,600 in 1992 to less than 36,000 by May 1996. Although labor flows to Israel have registered an increase since 1997, the Israeli market today absorbs less than 22% of the Palestinian labor force. Meanwhile unemployment in WBGS recorded unprecedented levels of 15-30% between 1994-97.

In view of the importance of labor flows to Israel to the Palestinian economy and households, this study seeks to assess the extent to which the labor-related articles in the Economic Protocol (EP) have been implemented. The Economic Protocol is an integral part of the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (Oslo-II) signed in Washington on September 28th, 1995. It sets out the regulatory framework for the economic relations between Israel and the WBGS during the interim peace process, pending a permanent status settlement. The issue of the movement of labor was central to the negotiations of the EP and to its successful implementation. Five years have now passed since this document was signed in Paris. In view of the time that has elapsed and of the forthcoming preparations for the final status negotiations, a thorough analysis of the labor-related articles appears most warranted.

Three major issues relating to labor were referred to in the EP. The first is the access of labor to Israel. This is central as it determines the employment and income prospects for a large segment of the Palestinian labor force. The second issue concerns the regulatory framework of

Palestinian recruitment into Israel. This deals mainly with the scope of Palestinian intervention in the management of labor flows, but also has implications on the access of workers to Israel. The third issue, which makes up the bulk of the Article on labor in the EP, relates to deductions made from the gross wages of legal WBGS workers in Israel. These deductions should ultimately be transferred to the Palestinian economy. They represent a significant source of savings that can be used for workers' benefits, especially during periods of unemployment, or to finance labor market policies.

The Economic Protocol has been the subject of much criticism lately. Many consider it to have failed in achieving its objectives. In assessing the reasons for the limited implementation of the Protocol, as well as of its labor-related Articles, it is possible to discern three main lines of argument:

- The first argues that the absence of political will to actually implement the agreements signed meant that nothing could be done to improve or ensure their implementation. While viable, this approach does not help to identify the inherent discrepancies in the Articles agreed upon.
- The second line of argument maintains that implementation failed because the agreement was structurally flawed from the very beginning (Arnon et Spivak 1998; Abdel-Raziq 1994). In order to assess the validity of such a critique it is important to assess the labor Articles available and examine how far the text can be at times unclear, and whether it provides for contingencies or not. It is also important to assess how far clear implementation mechanisms were set out in the agreements.
- A third line of argument stresses that political and economic changes in Israel and the WBGS since 1993 have made the EP obsolete and impractical. Since the signing of the Oslo Agreement in September 1993, the Israeli economy has undergone intensive liberalization and has grown by more than 5% per annum. It has admitted more than 250,000 overseas workers, thereby weakening its reliance on Palestinian labor. Meanwhile, the Palestinian economy has failed to diversify, although it continues to try to strengthen its local base while relying on international aid and support. The implications of these developments for Palestinian labor flows and for the validity of the agreements signed need to be assessed.

In the course of this study, all three lines of argument will be examined. The study will rely on available statistical data in addition to a series of interviews with workers, official representatives in Palestinian and Israeli ministries, members of the negotiation teams, trade union representatives, and NGOs concerned with workers' rights. Whenever data were not available, particularly with regard to deductions made from legal workers' wages, estimates have been produced.

The study is organized as follows. Chapter two will review the major trends in Palestinian labor mobility to Israel up until 1994. It will document the access of labor as well as the nature of the regulation of Palestinian employment in Israel. It will also describe the deductions made from the wages of legal WBSG workers in Israel and the social rights they are entitled to receive as a consequence. This discussion is necessary in order to understand how far the EP came to confirm or to modify developments taking place before 1994. The third chapter will analyze the labor Articles in the EP to assess the clarity and scope of the text. Chapters four to six will evaluate the implementation of the three main issues discussed in Article VII. Developments that have taken place since 1994 are documented to assess to what extent they are compatible with the resolutions taken. The reason for limited success in implementation will also be explained. Chapter seven will conclude with some policy recommendations.

2. Palestinian Employment in Israel 1967-1993

Since 1970, the Israeli economy has been an employment outlet for more than one-third of the Palestinian labor force (MAS; Farsakh 1998). The Israeli labor market absorbed most of the growth in the Palestinian labor force between 1970-1993, particularly poorer and less-skilled workers (Abu-Shokor 1987; UNCTAD 1995). Although not representing more than 7% of the total participants in the Israeli labor market, Palestinian workers were strongly in demand in the Israeli construction sector. Over the past thirty years, they came to make up 40% of all employees in this sector (MAS; Farsakh 1998). Within the Israeli labor market, Palestinian workers have held mainly unskilled jobs, but their presence has helped the low-skilled Israeli to move up the occupational ladder (Semyonov et Lewin-Epstein 1987).

Palestinian labor flows to Israel assumed this importance by virtue of the relatively free access of workers to the Israeli labor market. Access was not always unrestricted. Since Israel opened its market to WBGS workers in 1968, it has tried to control flows in order to prevent any displacement effect on Israeli workers. The nature and success of these controls varied over time. We shall now review the major trends in labor movements over the past thirty years in order to understand the nature of the labor issues that needed to be addressed in the interim period.

2.1 From Free to Limited Access

From 1968 onwards, there were continuous flows of Palestinian labor to Israel, albeit with some fluctuations (MAS; Farsakh 1998). The number of legal and illegal¹ workers increased from 20,000 in 1970 to more than 115,600 workers in 1992 (Figure 1). These figures are still thought to be underestimated.² It is not known whether these include workers in settlements as ICBS labor surveys did not ascertain that information from

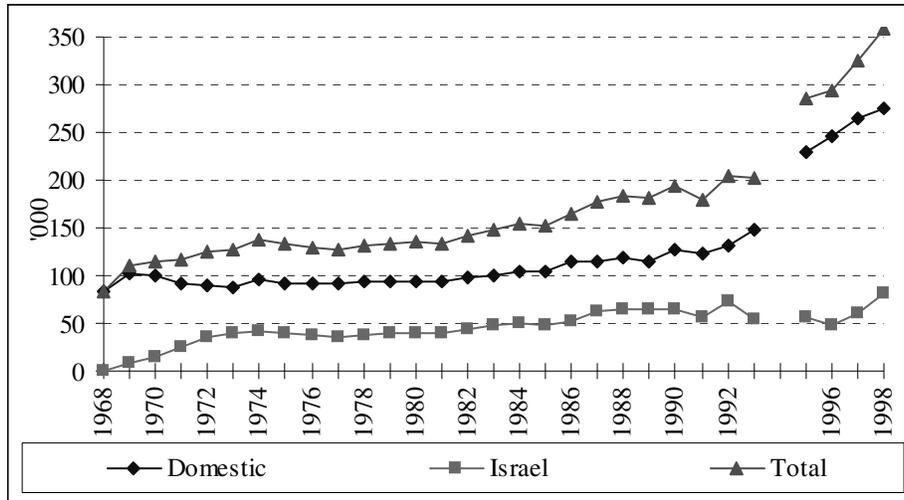
¹ Legal workers are those registered with the Israeli Employment Service. Illegal workers are those not registered with it. Their number is known from the Israeli labor force surveys undertaken in WBGS between 1968-93.

² Reported figures on the size of the Palestinian labor force and workers in Israel are believed to be underestimated by 10-15% (World Bank 1993). For further discussion of the problems with available statistics, see MAS; Farsakh 1998, Chapter 2.

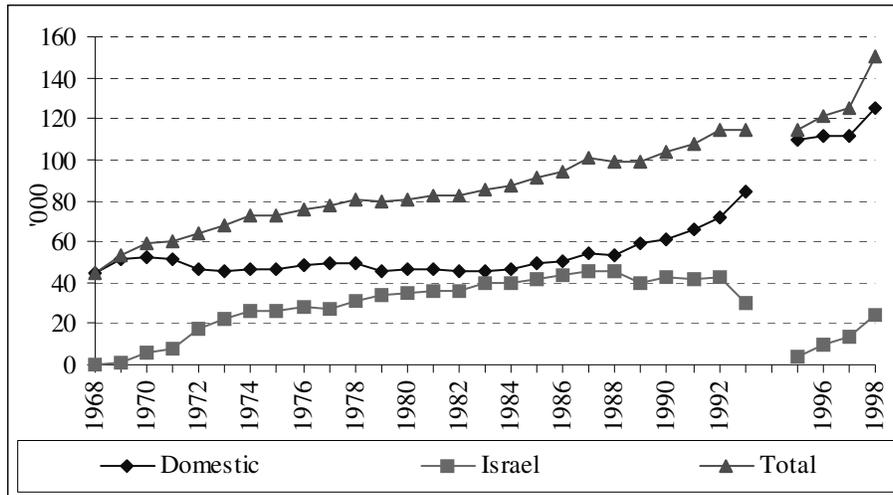
workers. Settlements are believed to have become an employment outlet in the 1980s.

In terms of share in the total active population, the Israeli market remained more important to the Gaza Strip than to the West Bank. Between 1975-1990, it absorbed 35-45% of the Gazan employed force compared to 25-30% of West Bank workers. The pivotal role of the Israeli market to the Gaza Strip economy was confirmed in 1975 and continued until 1988 (Table 1, Figure 1). This dependence was largely aided by the inability of Gaza Strip workers, unlike their West Bank counterparts, to find employment in neighboring countries.

Figure 1
a. West Bank Workers by Place of Employment, 1968-1998



b. Gaza Strip Workers by Place of Employment, 1968-1998



Sources: ICBS, Statistical Abstract of Israel, various issues.

PCBS, Labor Force Surveys, various issues.

Notes:

Figures for the West Bank exclude East Jerusalem between 1968-1993 and include it afterwards.

Figures refer to total employment. They are yearly averages. 1994 figures are not available.

Palestinian reliance on the Israeli labor market was mainly a consequence of the inability of the domestic economy to create enough jobs to absorb its growing labor force. Between 1970-93, the employment of Palestinians in Israel grew at an annual average of 6.3% compared with 1.8% in the WBS domestic economy. Higher wages in Israel were also an attractive pulling factor, especially in the early 1970s and after 1988 (Arnon et al 1997; MAS; Farsakh 1998). Labor movements were facilitated by the fact that access to the Israeli labor market was, up until 1988, unrestricted and easy. In Israel, Palestinian labor was particularly important in the construction sector, where it represented between 30-40% of all employees in the 1980s (MAS; Farsakh 1998).

Since 1988, access to the Israeli labor market has become more difficult. During the Intifada, the number of workers continued to grow (except for 1991) but the hours and days of work started to drop. Meanwhile, Israel introduced restrictions on Palestinian mobility. Curfews were increased after 1988 and checkpoints were set up to inspect workers and persons

seeking to cross the Green Line. In 1991, Israel started to implement the closure policy, which prevented workers from reaching their work place beyond the Green Line.³ Gaza Strip workers suffered more than West Bankers in this regard (Table 1, Figure 1). By the time the Economic Protocol was being negotiated in Paris, the number of workers had dropped to a total of 84,000, its level in 1982. The days of closure recorded in 1993 and 1994 were 102 in the Gaza Strip and 75 in the West Bank.

2.2 Regulatory Framework of Palestinian Employment in Israel: Increase in Restrictions

2.2.1 Recruitment Patterns

Higher wages in Israel and low employment growth in the WBGS economy during the years of occupation provided strong incentives for Palestinians to seek jobs beyond the Green Line. However, the recruitment of workers was not entirely unregulated or disorganized. Rather, it was channeled through three main recruitment patterns.

WBGS workers seeking employment in Israel are usually hired either directly by the employer through subcontracting arrangements, or through labor contractors. Direct recruitment means that the Israeli firm chooses its workers without passing through any intermediary. Recruitment through a subcontractor means that workers are hired by a firm undertaking subcontracting work for a large company. Workers' wages are paid out of the lump sum amount that the subcontracted firm (Israeli or Palestinian) receives from the larger company and not from the employer directly. This system of recruitment is particularly pronounced in the construction sector, as it is considered to be highly flexible and adaptable to cyclical sectors. Labor contractors, by contrast, are agencies whose aim is to put employers and workers into contact. They are intermediaries that in principle reduce the transaction cost to employers and workers. Over past years, the number of labor contractors has grown, often operating illegally. Unfortunately, little is known about their activities during the pre-1993 period, but it is generally believed that some charge workers exorbitant fees (Sbeih 1994). This is particularly the case when demand for labor is restricted while the labor supply is large.

³ Closure may include not only the closure of borders with Israel but also restrictions on access to areas within the West Bank. Border closure is the most serious impediment to the mobility of workers to Israel.

2.2.2 Legal Employment in Israel

Ever since Israel has allowed Palestinian workers to work beyond the Green Line, it has tried to regulate the flow of WBGS labor to prevent any displacement effect on Israeli workers. It therefore made it obligatory for workers seeking employment in Israel and prospective employers to be registered at the Employment Service at the Israeli Ministry of Labor. Workers seeking a job in Israel had to submit their request at one of the employment offices set up in the West Bank and Gaza Strip. These offices were managed by the Israeli Civil Administration in consultation with the Israeli Ministry of Labor. The Employment Service at the Ministry of Labor was the body responsible for coordinating the demand and supply for workers. It allocated WBGS workers to jobs where no Israeli alternative was available.

The basic conditions for hiring a WBGS worker were made the same as those for hiring an Israeli. No worker was to be paid less than the minimum wage and Israeli employers had to pay the same social benefits as those paid to legal Israeli workers. Legal workers therefore had a minimum of legal rights and a number of social benefits (see below). Up until 1988, the rationale and means for intervening in WBGS labor allocation in Israel were economic.

The Employment Service only regulated the employment of workers in Israel. Workers in the settlements were not regulated by it and, up until 1988, went unobserved.

2.2.3 Illegal Employment

Despite these incentives, most workers continued to go to Israel without registering at the Israeli employment offices. Throughout the 1970s and 1980s, illegal workers represented 50-70% of the total number entering Israel. They continued to be recruited through personal contacts, labor contractors or subcontractors without regularizing their situation by registration at the Employment Service.

Illegal, or irregular, workers are paid cash and do not enjoy any legal protection. From the employer's perspective, they are less expensive than legal workers since the employer does not pay them any of the social benefits to which they are entitled. From the worker's point of view, the situation is less clear. Field studies reveal that workers recruited informally get higher daily *take-home* wages than legal ones (Abu-Shokor

1987; Khaleefeh 1996). However, they do not enjoy any social rights and they may be obliged to pay high fees to labor contractors.⁴

2.2.4 Security versus Economic Priorities:

The Work Permit System

Up until 1988, access to Israel was determined by economic factors, namely the supply and demand of labor. However, after the Intifada, the Israeli authorities took a number of measures to restrict the entry of WBGS workers into Israel. These measures were based on political factors rather than purely economic priorities.

In 1988, Israel issued green ID cards for ex-detainees to prevent them from entering into Israel. All workers going to Israel were also required to carry magnetic cards, which provided security clearance. In 1991, the Israeli government introduced the work permit system. This turned employment into a political rather than an economic issue. Palestinians needed to get security and tax clearance from eight different Israeli offices, a written request for their services by the Israeli employer and proof of registration at the Employment Service in Israel before the work permit could be obtained (PHRIC 1992). Moreover, restrictions were imposed on the characteristics of workers (Box 1). Permits for both workers in Israel and in the settlements were issued by the Israeli security officer at the Israeli Civil Administration.

Israel also introduced measures to reduce the presence of illegal workers. After 1991, fines on workers and employers hiring illegal workers were increased. In March 1991, the Knesset approved legislation to fine employers US \$7,000 per illegal worker employed (PHRIC 1992:14). Meanwhile, fiscal subsidies were given to those who employed ex-Soviet Jews in place of Palestinians.⁵ Illegal Palestinian workers found in places of work in Israel were fined US \$150-200, nearly half of their monthly salary (PHRIC 1992).

⁴ Available data do not distinguish between wages according to the skills of workers and their legal/illegal situation. In other words, skilled illegal workers might earn more than legal workers, but unskilled workers might actually be worse off working illegally (Chapter 4 for further details).

⁵ Such as reducing an employer's social contribution taxes and a subsidy of one third of the salary of the immigrant replacing a Palestinian (PHRIC 1992: 13).

Box No.1: The Work Permit System.

The introduction of the permit system in 1991 greatly contributed to the control of labor supply and recruitment to Israel. The access of WBGS workers to Israel became conditional in the following ways:

- Documents needed:

Up until 1991, all workers carried a work card that showed their details and details of their employer. After 1991, work permits were only issued if the workers had :

- 1- an employment request from the employer passed via the Israeli Employment Service.
- 2- security clearance undertaken by the Israeli Ministry of Defense
- 3- Magnetic card: introduced in 1988 and increasingly used as another proof of the identity and security clearance of the employee.

- Duration of work permits:

Before 1991, employment cards were issued initially for 3 months, then renewed for six months, then yearly. After 1991, work permits were only issued for two-month periods, renewable upon employer's request. In 1997, Israel increased the duration to 3 months.

- Conditions for issuing permits:

Restrictions were placed on the age of workers and their marital status. The age criteria changed from time to time. After 1993, all legal workers to Israel had to be above 28 years of age and married. In 1998, Israel promised to reduce the age to 23. Workers on settlements were allowed to be 18 years old and unmarried.

- Time and location restrictions:

Before 1991, workers going to Israel were not restricted to specific areas or hours of work. After 1991, work permits specified such information. No worker was permitted to sleep in Israel.

- Who is concerned: Workers in Israel and in the settlements.

With these restrictions, together with the policy of closure initiated after 1991, it became increasingly possible to control the number and character of Palestinian workers in Israel. The number of WBGS workers going to Israel started to drop while the share of legal workers jumped to more than 60% after 1991.⁶

2.3 Deductions from the Wages of Legal Workers in Israel

Among the prime advantages of legal employment in Israel is the fact that it guarantees workers some social rights. Israeli law ensures, in principle, that Palestinian workers are treated equally with Israelis.⁷ They are entitled to social benefits, such as pension and work related insurance, due to the fact that deductions are made from their gross wages to the Israeli social security system. Up until 1991, workers paid up to 11.6% of their gross wage to this system while employers paid as much as 27 % (Table 2).

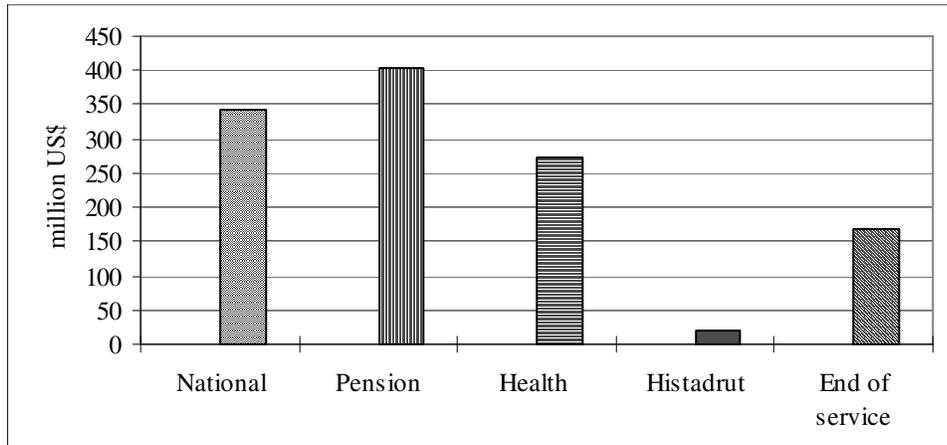
According to modest estimates, a total of US \$1.2 billion was deducted from the wages of WBGS workers in Israel between 1970-1993 (Table 3, Figure 2).⁸ If a 5% compound interest payment is calculated on these sums, a total of \$2 billion could be saved in Israeli establishments. These represent substantial savings. Pension, and to a lesser extent health tax, were the largest contributions. However, these savings were not always accessible to WBGS workers or to their economy. They were often used by the Israeli Treasury and Civil Administration and rarely invested for workers' benefits.

⁶ Calculated by comparing the number of permits issued in 1992, 1993, 1996 and 1997 with the number of workers reported by the ICBS and PCBS labor surveys to be working in Israel.

⁷ They are not to be paid less than the minimum wage or discriminated against. However, given that most Palestinian workers are defined as day laborers (rather than monthly workers), they are deprived of a number of rights stipulated in collective labor agreements, particularly those pertaining to seniority and those resulting from permanent employment (e.g. study fund, one month notice for firing, etc) (Kav Lavoed 1993).

⁸ Estimated deductions are calculated in 1990 dollar prices. They exclude income tax payments but include all other social payments made by workers and their employers. They were calculated on the basis of reported take-home wage and not on the basis of gross wages. Information on gross wages was not available while data on reported take-home wages were obtained from the ICBS. They are believed to have been in the range of the Israeli minimum wage (World Bank 1993). We also assumed that only 40% of workers were legal over the whole period. Available data suggest that the share varied between 30-50% of all workers. Our estimates do not include interest payments. Therefore the sum reported is the lowest possible amount collected between 1970-1993.

Figure 2: Estimates of Deductions from the Wages of Legal WBS Workers Employed in Israel, 1970-1993 (figures in million US\$)



Source: Table 2.

2.3.1 The Pre-1994 System

Six different payments are deducted from the gross wages of WBS workers in Israel (Table 2). These were introduced in 1970 and remained applicable after 1994. Apart from income tax, they concern only workers in Israel. Workers employed in Israeli settlements in the West Bank and Gaza Strip do not make any of the other payments and are therefore not entitled to any benefits.

Apart from income tax, the sums deducted were collected by the Payment Division at the Employment Service of the Israeli Ministry of Labor, which then transferred them to the parties concerned. Up until 1993, WBS workers received their net salary and their social benefits via this Payment Division and not directly from the employer or the relevant social security institution. This system was particularly important for centralizing and controlling Palestinian wages in Israel.

The following description will concentrate on the system of deductions taken from the gross wages of WBS workers as it stood in 1991. Compared to earlier years, 1991 rates are somewhat lower. The discussion will concentrate on the nature of the deductions made, by whom they are contributed and what benefits they provide. It will also analyze the accessibility of these funds to workers.

2.3.2 Types of Deduction

1. National Insurance charges: 12% of a worker's gross wages goes to National Insurance (Table 2). The employer's share in these payments is larger than that of workers but over the years the percentage paid by employers has fallen.⁹

In principle, payments made for National Insurance entitle the worker to 12 different types of benefit. However, Palestinian workers in Israel, *while paying for all these benefits*, are only entitled to three of them. These include

- a- insurance against employer's bankruptcy
- b- insurance against accidents in place of work
- c- maternity allowance only when Palestinian working women give birth in an Israeli hospital.¹⁰

These benefits represent what became defined as Basic National Insurance benefits (Table 2). These formed only 7% of the total payments made to the Israeli National Insurance Institute (NII). The other 93% paid to the NII were not reclaimable by workers.

This discrepancy between the total amount contributed and the benefits actually disbursed to WBGs workers was a major source of injustice during the years of occupation. Moreover, these taxes did not always go to the NII. Before the peace process, only 7.7% of total contributions collected were sent to the NII. The rest went to the Israeli Treasury via the Payment Division of the Israeli Ministry of Labor. In 1991, this amounted to a total of NIS 96 million (or US \$32 million) (Kav Lavoed 1993). These sums were not given to WBGs workers or to their economy.

2. Pension: From the beginning of 1970, the Payment Division of the Employment Service at the Ministry of Labor created a special pension fund for WBGs workers. Payments made to this fund varied by sector and were largely contributed by employers (Table 2). Palestinian workers are entitled to a pension if they have

⁹ Between 1976-1991, the share paid by the employer (out of gross wages) fell from 15.2% in 1976 to a maximum of 4.7%.

¹⁰ The other benefits provided by the system include unemployment benefit, child benefit, family allowance, etc. WBGs workers do not get these benefits because they are defined as non-residents. WBGs workers also fail to get maternity leave benefits since they rarely give birth in Israel.

worked in Israel for at least ten years and have reached retirement age.¹¹ If they do not meet these conditions, upon termination of work WBGS workers can still receive their pension savings as a lump sum payment. They have no right to claim any pension if seven years pass between the end of their employment and their request for payment.

Evidence suggests that workers found bureaucratic difficulties and long time lapses before obtaining their pension payments. Many do not claim it or confuse it with severance payment. In 1993, only 985 workers received a monthly pension from the pension fund managed by the Israeli Payment Division (Kav Lavoed 1993).

3. End of service social benefits: These benefits are usually given to workers at the end of their service. They are paid by the employer only and are *not* collected in a fund. They can be quite extensive, particularly in the construction sector. Palestinian workers can only claim them via the Employment Division at the Israeli Ministry of Labor or through legal suit. If they are not claimed, they are not transferred to workers. Among the benefits provided are:

- holiday pay
- sick pay insurance
- training
- recuperation: in the construction and agricultural sectors
- others: training grant, severance pay, and seniority in the construction sector.

4. Health insurance: This is a flat rate payment paid only by the worker and is transferred to the National Health Authority in Israel. Up until 1994, workers paying this tax were entitled to health treatment in all public hospitals of the WBGS and Israel. Between 1970-1993, the total amount collected in health taxes was estimated at around US \$204 million (DATA 1995).¹²

¹¹ Retirement age is 65 for men and 60 for women.

¹² This has been estimated by DATA 1995 on the basis that only 30% of workers were regular workers over that period and that the health tax was around US \$30 per month. This is an average estimate of the value of health tax in dollar terms between 1970-1993.

5. Income tax: This is a tax paid by the worker only and is governed by the same conditions applied to Israelis. The range of the deductions depends on the workers' marital and family conditions, the days of work, and the salary that is reported. Workers earning the minimum wage do not pay it. All sums earned above that wage are taxable. Before the peace agreements, these deductions went to the Israeli tax authority. There is no evidence that these were invested in the WBGS.
6. Histadrut: This is a charge paid only by workers to this Israeli trade union. In 1991, it amounted to 0.8% of their gross wage if they were not registered as members. Members pay up to 0.1% of their wages. This payment entitles them to protection and legal representation, although in practice the rights of Palestinian workers were rarely defended.

2.4 Conclusion

Three pressing labor issues demanded attention in the interim period. The first relates to securing the access of WBGS workers to Israel. The Israeli labor market has been a central employment outlet for the labor force in the West Bank and Gaza Strip. It has been particularly important for the inhabitants of the Gaza Strip and for poorer sections of the population. Palestinian workers also make up a significant number of those employed in the Israeli construction sector. Up until 1988, the access of workers to the Israeli labor market had been relatively free. However, with the Intifada, measures such as curfews and closure were taken to restrict their entry into Israel. These measures were of a political rather than an economic character.

The second issue is the question of Palestinian regulation of employment in Israel. Up until 1988, labor flows were regulated by economic considerations. However, the introduction in 1991 of the permit system made the employment of WBGS workers in Israel dependent on political rather than economic considerations. Since then, Gaza Strip workers have found it more difficult to gain access to Israel than West Bankers and the share of legal workers jumped to more than 60%. The question was thus to determine how legal employment would be encouraged in the interim period and whether

flows would be determined by economic priorities or unilaterally defined political considerations.

The third central labor topic relates to the deductions made from the wages of legal WBS workers in Israel. The major advantage of legal employment lies in the fact that it entitles workers to social rights and benefits. Modest estimates of the deductions made from the wages of legal WBS workers in Israel reveal that these represented as much as US \$1.2 billion, (or \$2 billion if a compound interest of 5% per annum is calculated on the annual deductions). However, these contributions were not always used for the benefit of workers but were kept in the Israeli economy. More than 93% of contributions made to the National Insurance Institute went to the Israeli Treasury, as did health and income taxes. Payments to the Histadrut were also not used for the defense of workers' rights. Pension funds were saved and end of service benefits were protected, but these were not always claimed by workers, largely due to ignorance or bureaucratic difficulties. We shall now turn to see how the EP tried to stop this leakage.

3. Labor-Related Articles in the Economic Protocol

“ Labor flows from the Territories are no doubt the cornerstone in the economic relation between Israel and the Territories. It forms today the main factor binding the Territories to the Israeli economy. The alternative to this factor is the export of goods produced by workers....The desired trade arrangement between Israel and the Territories will be, in many aspects, *derived* from the number of Territories’ workers employed in Israel.” Ben-Shahar 1995, *Report of the Economic Consulting Team to the Political Negotiation. The Economic Quarterly*; p:93 (italics added).

3.1 Labor Flows and the Interim Economic Agreement

The Protocol on Economic Relations (EP) signed in Paris on April 29th 1994 established the regulatory framework within which economic activity should take place between Israel and the WBGS during the interim period. The issue of labor access to Israel would be vital to the successful implementation of the Protocol. Free labor flows to Israel have been the central factor binding the WBGS to the Israeli economy. The alternative was either a separation of the two economies or the search for another type of bond, namely the export of labor intensive goods and an increase in trade (Sadan 1991; Ben Shahar 1995).

The Palestinian and Israeli negotiators arriving in Paris did not have the same vision with respect to the kind of economic relations to be established between the WBGS and Israel in the interim period. They did not have the same perception of the place of labor flows in any agreement, nor the same powers of imposition.

3.1.1 The Palestinian View: Free Trade and Labor Flows

During the negotiations on the EP, Palestinian negotiators tried to push for a free trade agreement between Israel and the WBGS. They believed that a free trade agreement would enable the WBGS economy to diversify and thus strengthen its links with the rest of the world. It would also reduce

dependence on Israel and allow the Palestinians to decide their own economic priorities and policies. This, in turn, would have enabled the creation of a sound basis for a sustainable export-oriented economy.

However, they also wanted to maintain the free access of Palestinian workers to Israel,¹³ a guarantee that is not always maintained in usual free trade agreements. Free labor access to Israel was necessarily an intermediate solution in view of the major task of reconstruction planned by the Palestinian National Authority (PNA). The Palestinian economy was simply not ready to create enough sustainable jobs to absorb the annual 30,000 new entrants into the labor force, let alone the 100,000 workers employed in Israel, or the expected returnees.

3.1.2 The Israeli View: Sovereign Control

The Israeli negotiators were completely opposed to a free trade agreement. Politically, it would have implied recognition of borders between Israel and the WBGs and it was categorically refused. The Declaration of Principles (DOP) signed in Washington on September 13th 1993 - which set out the entire framework for negotiations in the interim period - clearly stated that all issues relating to definite territories and borders were to be excluded from discussions (DOP VII.3). From an economic point of view, Israel was concerned about potential leakage and industrial displacement from Israel to the Palestinian economy if a free trade agreement was signed and the WBGs used a low tax system and jurisdiction (Kleiman 1994). Israel also argued that a free trade agreement would not necessarily guarantee labor flows.¹⁴

Israeli experts believed that a common market, and thus the free movement of goods and factors of production (including labor), would provide the best economic solution for the WBGs and for Israel. Nevertheless, “a common market was precluded if only by Israel’s unwillingness to commit itself to employing workers from the Territories in unrestricted numbers”

¹³ Based on conversations with Palestinian officials as well as with E. Kleiman, chief technical advisor to the negotiating team. For further confirmation see also Kleiman 1994.

¹⁴ According to a chief Palestinian negotiator in Paris, it was Israeli insistence that a free trade area would jeopardize the access of Palestinian workers to Israel that made Palestinian negotiators “accept” a special customs union. It still remains unclear as to what extent labor issues were really central to the negotiations and their outcome. Other participants to the negotiations maintain that no trade-off was made between a free trade agreement and a customs union on the basis of whether labor mobility would be maintained (based on a conversation with E. Kleiman in 1998 and comments provided by the Palestinian reviewer).

(Kleiman 1994, p. 354). The Israelis wanted to maintain the access of Palestinian workers to Israel in order to avoid a serious deterioration in Palestinian living standards (Ben Shahr 1995, p. 92). However, it wanted to reserve the right to decide *alone* who and how many Palestinians would be entitled to enter (Kleiman 1994, p. 352). The group of economic experts to the negotiating team recommended that the number of workers be reduced to less than 70,000 after the signing of the interim agreement for political and security reasons (Ben-Shahar 1995, p. 92).

3.1.3 The Outcome: A Quasi-Customs Union

The outcome of the negotiations was the quasi-customs union. The EP establishes no clear borders between Israel and the WBGS. It allows for the free movement of capital and goods but makes no commitments on the movement of labor. At the same time, it gives Palestinians the right to trade with the outside world (EP, Lists A1, A2, B1) and gives them some leeway to make their own economic decisions. For all economic policies regarding relations and access to the outside world, however, they must coordinate with the Israelis.

Of all the peace agreements signed in the interim period, the EP is important because it is *the* reference document for economic issues. As such, it should govern labor as well as all other economic issues. The Palestinian- Israeli Joint Economic Committee (JEC) was created to follow up the implementation of the resolutions taken (EP, Article II). The workability of the agreement was based on the assumption that “both parties shall *cooperate* in order to establish a sound economic base for their relations which will be governed in various economic spheres by the principles of *mutual respect* of each other’s economic interests, reciprocity, equity and fairness” (EP preamble; italics added).

3.2 Article VII of the Economic Protocol

The issue of labor flows to Israel is discussed mainly in Article VII of the EP. However, the bulk of Article VII (as well as Article V.4) is concerned with the issue of deductions made from Palestinian wages in Israel. Only the first paragraph of Article VII is concerned with the issue of the movement of labor (Box 2).

Box 2: Article VII of the Economic Protocol

Article VII comprises 13 paragraphs covering five main issues. These are:

VII.1	Normality of labor movements.
VII.1	The organization of labor flows to Israel.
VII.2-VII.9	Deductions made from the wages of WBGS workers in Israel: nature of deductions and their transfer to Palestinian institutions.
VII.10-VII.11	The role of the JEC: To meet whenever requested, to review the implementation of the Article, as well as discuss other deductions not mentioned in it.
VII.12-VI.13	Protection of the <i>individual</i> social rights of Palestinian workers. Pre-1993 rights are protected and workers are entitled to bring employer-employee disputes before the Israeli courts.

3.2.1 Labor Flows to Israel: No Guarantee of Labor Mobility

The first item in Article VII establishes that “both sides *will attempt* to maintain the normality of movement of labor between them, subject to each side’s right to determine from time to time the extent and the conditions of labor movement into its area” (italics added). The Article is therefore not committed to keeping the access of labor flows to Israel open, let alone unrestricted.

According to Palestinian negotiators in Paris, they tried to obtain a verbal commitment from Israel that it would maintain the free movement of labor but Israel refused to include any assertive terminology. The suicide bombing of February 1994 further strengthened their position. The Palestinian side tried to request that a certain quota of workers would be guaranteed access to Israel but the Israelis refused on the grounds that it has a sovereign right to determine who enters its territories.

If anything, then, the first paragraph of Article VII recognizes the right of Israel to restrict labor flows and to define the conditions under which workers are entitled to enter the Green Line. This right is further guaranteed by the fact that the paragraph already anticipates that borders

might be closed. It stipulates that “If normal movement is suspended temporarily by either side, it will give the other side immediate notification and the other side may request the matter to be discussed in the Joint Economic Committee.” Given that it is the Palestinians who are the most dependent on the export of labor, the only side that can suspend normal movement is the Israelis. Furthermore, no legal or moral repercussion falls on Israel in these circumstances. Nothing in the Article obliges Israel to discuss the matter at the JEC or to reverse its action.

3.2.2 The Regulation of Labor Flows: Joint Israeli-Palestinian Coordination

The second part of paragraph 1 of Article VII confirms that the regulation of WBGS employment in Israel will continue to be carried out via the Israeli Employment Service and in accordance with Israeli legislation. The paragraph, however, gives the Palestinian side the right to participate in labor placement. This, in principle, would help the Palestinian Authority to protect workers and direct labor flows in ways which it deems most useful (encourage unskilled or skilled labor to go to Israel, favor certain workers from needy backgrounds, etc). According to Article VII.1, the Palestinian side is permitted to organize labor flows to Israel via the creation of its own employment offices which should coordinate with the Israeli Employment Service. The details of this coordination are not specified. Moreover, the Article does not specify the forms of recruitment or work permits that will be used to regulate labor movements in the interim period.

3.2.3 Deductions from the Wages of WBGS Workers in Israel: Important Recognition

Article VII in the EP (VII.2-VII.9), in addition to paragraph 4 in Article V, maintains the same structure of deductions as applied prior to 1994 (VII.3).¹⁵ However, it made 3 significant provisions:

- Firstly, it guarantees that legal WBGS workers would continue to be entitled to the same social rights and benefits to which they were entitled prior to 1994.
- Secondly, it recognizes that payments made to the National Insurance Institute were not fair.

¹⁵ The Article does not discuss the size of the deductions as these are determined by the social security institutions concerned.

- Thirdly, it accepts to repay social payments paid by workers and employers to the Palestinian economy. The bulk of Article VII is concerned with the conditions and nature of this repayment.

Payments to the National Insurance Institute: Recognizing injustice

Paragraph 2 clearly states that Palestinian workers will continue to make National Insurance contributions. This entitles workers to Basic National Insurance benefits, which provide insurance against work accident injuries that occur in Israel and against the bankruptcy of employers. It also provides maternity leave allowance.

The major advantage in this paragraph is its recognition of the discrepancy existing between the sums contributed by Palestinian workers to the National Insurance Institute and the benefits provided to them (VII.3). Israel therefore established what it called the *Equalization Levy*,¹⁶ which is the difference between the full amount paid by workers to the National Insurance Institute and the benefits to which WBGS workers are entitled (Basic National Insurance). Moreover, it accepted to transfer this Levy to the PNA. The Equalization Levy represents 93% of the total payments made by workers and employers to the National Insurance Institute. These were never before accessible to WBGS workers.

Transfers: Entities to which funds will be transferred

The EP decided that deductions made from WBGS wages would be transferred to three different entities; the PNA, Palestinian social security institutions and individuals. In so far as health and income tax are concerned, Article VII (and V.4) specify that funds will be transferred to the PNA and integrated into its health and income tax system (VII.9; V.4). The Equalization Levy is also to be transferred to the relevant Palestinian authority and to be used for benefits for workers and their families (VII.3). Pension and Basic National Insurance sums are to be transferred to a relevant pension and social security institution to be created by the Palestinian authority (VII.2, 4). End of service benefits are transferable directly to individuals upon request.

Paragraph 8 recognizes the right of the PNA, or any trade union organization representing Palestinians employed in Israel, to make an agreement with the Histadrut - the representative organization of

¹⁶ This was created in 1992.

employees in Israel¹⁷ - concerning the payments made to it by Palestinian workers (VII.8).

Size of funds to be transferred: 1970-1993 sums excluded

Israel only accepted to transfer funds accumulated after 1994, after deducting two-thirds of the administrative costs born by the Israeli Employment Service for managing Palestinian employment in Israel. Even in pension funds, only sums collected *after* 1994 could be transferred to the eventual Palestinian pension institution (VII.4), although Israel continued to be liable for *individual* claims for pensions accumulated before 1993. Israel accepted to transfer the full amount of income tax collected from workers employed in the settlements but only two-thirds of that collected from those working in Israel (Article V.5).

3.2.4 Legal Responsibility: Israel versus PNA,
Institutions versus Individuals

Article VII is among the only Articles in the whole of the EP that touches on judicial aspects specifically,¹⁸ since it deals with the individual rights of workers. While the Article specifies that it “governs the future labor relations between the two sides”, it also states that it “will not impair any labor rights prior to the date of the signing of the Agreement” (VII.13). Paragraphs 6, 7, 12, 13 discuss mainly how workers can access and protect their rights. In view of the fact that the Article envisages the transfer of workers’ savings to various bodies (individuals, institutions, Israel, PNA, etc), the legal responsibilities of the various parties needed to be defined. This is necessary in order to ensure that workers can access their benefits under all circumstances.

Individually, workers may continue to claim their pre-1993 social rights from Israeli institutions. Post-1994 claims can also be requested from Israel as long as the funds have not been transferred to the Palestinian counterpart. Once a transfer has taken place, Israel and its institutions will no longer be held accountable for any personal claims, rights or benefits (VII.5). Israel is thus freed from its responsibility towards the Palestinians. The Palestinian Authority and its relevant institutions become liable for

¹⁷ It also recognizes the right to any agreement between a representative Palestinian organization and an organization of employers in Israel.

¹⁸ The EP does not in general touch on judicial aspects since these are governed by the Protocol Concerning Legal Matters (Annex of the Oslo II). The only other Article that touches on legal issues is the Article that relates to international trade agreements (Kleiman 1994, p.370).

workers' rights. The Article, however, does not specify how workers' rights will be protected after a transfer since it is the role of Palestinian *legal institutions* to define the scope and guarantees of such rights.¹⁹

On the other hand, the Article establishes that legally Israel remains the only sovereign body. Palestinian workers continue to have the right to bring disputes arising out of employee-employer relationships and other issues before the Israeli courts, provided it is within these courts' jurisdiction (VII.12). Moreover, paragraph 7 specifies that Israeli courts can decide whether the arrangements signed with regards to the Equalization Levy and pension deductions are lawful or not. It is the *only* body that can determine whether these deductions "must be paid to individuals rather than to institutions and whether they are to be used for individual insurance in Israel and not in the WBGs". This stipulation defends the individual rights of workers over institutional claims. It also gives supremacy to Israeli law over Palestinian sovereignty.

3.2.5 Implementation Mechanisms: Unspecified

The JEC was created as the agency responsible for ensuring the implementation of the EP and dealing with issues of common interest. It was not specifically endorsed with any particular task as regards labor issues (VII.10, 11). Article VII does not specify the agencies to be involved in the implementation process (ministries, committees, etc), nor the manner of work (agenda, regularization of meetings, procedures). Earlier scripts of the Article included the establishment of a labor subcommittee, under the auspices of the JEC, which would define the details of cooperation and implementation of the labor Article. However, the final version of the Article did not make a specific mention of this.

3.3 Critical Assessment: Rights Recognized but some Weaknesses

3.3.1 Access to Israel

In so far as labor mobility is concerned, Article VII is particularly weak. There is no commitment to the free access of labor or to open borders. Moreover, there is no comprehensive discussion of the regulation of labor flows. The Article does not mention the issue of permits that have

¹⁹ The Article specifies that the transfer of pension funds to Palestinian institutions will be done once the "documents required to give legal effect to the aforesaid obligations, including mutually agreed implementation procedures" are provided (paragraph 6).

determined the nature of labor flows since 1991. It also does not deal with workers in the settlements.²⁰

3.3.2 Workers' Rights

The greatest achievement of Article VII of the EP is its recognition of the social rights of WBGS workers in Israel. The most important Palestinian success is Israel's acknowledgment that most of the contributions made by Palestinians to the Israeli National Insurance scheme were never used for their benefits. By creating the Equalization Levy and accepting to return it, together with income and health taxes to a Palestinian authority, Israel admitted that the Palestinian economy has the right to benefit from the deductions made from the wages of WBGS workers.

Nevertheless, the Article has two weaknesses with respect to workers' rights. The first injustice relates to Israel's refusal to transfer all pre-1993 savings to the Palestinian economy. This was a major loss to the Palestinians but there was nothing the Palestinian negotiators could do to make Israel reconsider its position.²¹ The second problem lies in the fact that Article VII introduces some confusion. Given that it tried to combine individual and institutional claims, it did not always clarify where the line between the two lies. This problem is most apparent in the case of the Equalization Levy. Paragraph 3 recognizes that Equalization deductions are to be transferred to the Palestinian Authority to be used for the benefits of workers and their families. However, it does not specify *how and by whom* these benefits will be guaranteed. Some legal NGOs argue that such a transfer is illegitimate since it should be made to workers directly rather than be mediated by government (Kav Lavoed 1997).

3.3.3 Implementation

Last but not least, the Article fails to establish clear implementation mechanisms. The JEC, which is the forum for raising and solving issues of common concern, is composed of an equal number of members but can only reach agreement by consensus. There is no scope for arbitration or for giving support to the weaker party. Moreover, no specific labor committee or procedure is laid down to ensure the implementation of resolutions taken. The issue of the transfer of power between the

²⁰ The EP only mentions the workers in the settlements when it refers to the income tax paid by them and the right for it to be returned to the Palestinian economy (V.4).

²¹ An earlier draft version of the Article included a Palestinian request that Israel open, under the auspices of the ILO, its records of WBGS wages and social payments made since 1970. Israel refused.

Palestinian and Israeli sides as regards the organization of labor recruitment, is not tackled. This raises the question of who controls what. For example, it is not clear what will happen to the Israeli employment office installed in the WBGs or what is the prerogative of the Palestinian employment offices. Yet, this imprecision will prove central in explaining the success or failure of the Protocol.

3.4 Conclusion

The EP introduced a number of measures but provided few guarantees to ensure their implementation. As regards workers' rights, it protected social benefits and accepted the repayment of workers' savings to the Palestinian economy. Yet, the text does not secure access, let alone the freedom of movement, of Palestinian workers to Israel. It was left to the actual implementation process to determine how far the agreement reached would be viable and effective in practice.

4. Implementation of the EP: Labor Access to Israel

In assessing the success or failure of the Economic Protocol in regulating future labor relations between the WBGs and Israel, it is important to review how far the agreements signed have been applied. The criteria of success consists basically of assessing how far the following points have been guaranteed:

1. The normality of labor movements to Israel;
2. The scope for the PNA to intervene in the regulation of labor flows in a way that best protects Palestinian workers;
3. The transfer of social contributions paid by Palestinian workers to Palestinian institutions.

The following three chapters will discuss the implementation record of each of these issues.

4.1 1994-1998: Normal Movement of Labor not Maintained

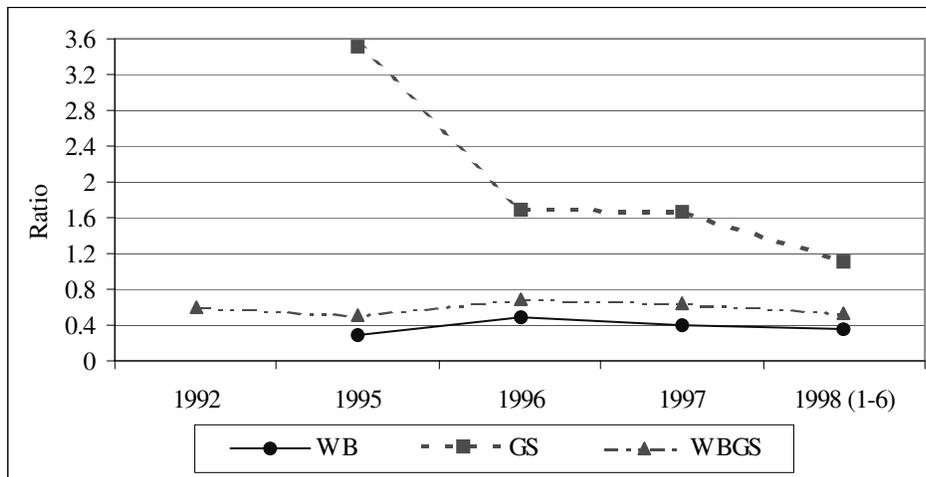
In so far as labor flows to Israel are concerned, four major developments have taken place over the past five years that were not anticipated by the Palestinian negotiators, nor always in line with the agreements signed:

- Firstly, the number of workers going to Israel dropped from its height of 115,600 in 1992 to less than 36,000 by May 1996. On average, less than 70,000 Palestinians worked in Israel between 1994-1997. This is a number very close to that anticipated by the Israeli economic experts to the negotiating team (Ben-Shahar 1995). Since 1998, flows have regained their 1992 levels but workers are composed primarily of West Bankers (Figure 1, Chapter 2).
- Secondly, Gaza Strip workers have found it far more difficult than West Bankers to access Israel. This trend, which first started in 1988, persisted in the interim period. In the 1980s, the Israeli labor market absorbed more than 35% of the Gaza Strip working population compared to less than 17% between 1995-1998. The West Bank, although unable to rely on the Israeli market to the same extent as prior to 1993, still exported 18-20% of its labor force

beyond the Green Line.²² In 1998, there were a total of 24,000 Gaza Strip workers in Israel, which is less than the total for 1974 (Table 1, Chapter 2).

- Thirdly, the share of legal workers jumped to more than 60% after 1991. This trend persisted after 1994 as the policy of permits became more restrictive (Box 1). It was particularly effective in the Gaza Strip. Since 1994, the number of Gaza Strip workers with permits has exceeded those without permits, indicating the inaccessibility of Israel to workers. In contrast, on average, less than half of West Bank workers had permits between 1995-1997 (Figure 3, Table 4).
- Fourthly, settlements in the WBGS became particularly attractive labor markets. According to available figures on legal workers, workers in settlements represent a third of workers going to Israel since 1995.²³ This is a worrisome development that needs to be countered, given the illegality of these Israeli constructions.

Figure 3: Share of Workers with Permits to Workers without Permits Employed in Israel, 1992-1998



Source: Table 4.

²² Down from 30% in the 1980s and early 1990s.

²³ Unfortunately no data is available on the number of workers (with permits or without) in the settlements before 1995.

Of these four developments, the one directly related to the EP is the fall and the volatility of labor flows in the interim period. The increase in legal workers and growth of employment in the settlements are a reflection of the difficulties of access. The disparity between West Bank and Gaza Strip workers in access to Israel is attributable to the fact that Israeli borders with the Gaza Strip are more “efficiently” controlled than those with the West Bank. The underlying political and strategic reason for this needs to be examined but is beyond the scope of this paper.

4.2 Reasons for Difficulties in Accessing Israeli Labor Market: Security versus Economics

Contrary to the stipulations of the EP, the normality of labor movements has not been maintained in the interim period. This is because labor access to Israel is, in practice, governed by security rather than economic considerations. The EP has failed to alter this imposed reality. Other factors, such as the entry of overseas workers into the Israeli market, have played a role but these remain secondary.

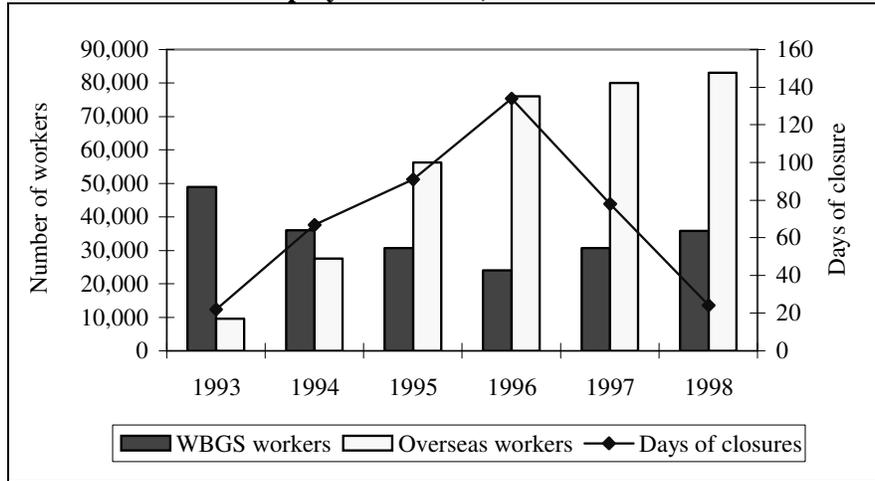
4.2.1 Overseas Workers

According to some observers, the arrival of overseas workers to Israel has been a reason for the drop in WBGs labor flows. The number of overseas workers has increased as the supply of Palestinian labor has dropped (Figure 4). Since Israel opened its door to overseas workers in 1992, their numbers have grown steadily. Between 1996-1998, a total of 150,000-200,000 overseas workers are assumed to have been employed in Israel compared with less than 110,000 WBGs workers in June 1998 (Arnon et al 1997). The number of overseas workers with permits increased three-fold between 1994-1997 and in the agricultural and industrial sectors they appear to be replacing Palestinian workers (MAS; Farsakh 1998).

In general, Israeli employers find that legal overseas workers are less expensive than Palestinian legal workers by 50% (Kav Lavoed 1998). This is because employers pay overseas workers only 0.67% of their gross salary for National Insurance. They do not have to pay them any of the pension or other social benefits to which Palestinian workers are entitled. Moreover, overseas workers are believed to accept lower wages given that they come from countries with lower standards of living.²⁴

²⁴ Based on conversations with some contractors.

Figure 4: WBGs and Overseas Workers with Permits Employed in Israel, 1993-1998



Sources: Israeli Ministry of Labor, Israeli Employment Service; ICBS, Monthly Bulletin of Statistics, Vol. XLVIII, Dec 1998, No.12; MAS, Economic Monitor, No.3, 1998a.

However, according to Israeli officials and construction contractors, overseas workers cannot replace Palestinian workers for two main reasons. Workers from the WBGs tend to be more experienced than overseas workers and have different expertise. Moreover, WBGs workers are distributed in different areas from those where overseas workers tend to work. The former are concentrated in WBGs settlements while overseas workers predominate in the coast and the North. Moreover, from a macro economic point of view, overseas workers are more expensive as they can incur various infrastructural and social expenses to Israeli society. Such expenses are not incurred in the case of WBGs workers since the majority go home at the end of a day's work.

4.2.2 Security and Closure

The major reason for the drop in the number of workers is the implementation of measures claimed by Israel as necessary for security. The two main policy measures, namely closures and the permit system, were used intensively after 1994. More than 400 days of closure were reported between 1994-1998, which prevented the movement of goods and services. Meanwhile, conditions for obtaining a work permit were made more restrictive (Chapter 2). The surge in foreign workers occurred *after* the intensive use of closure policies and the consequent fall in the steady

supply of WBGs labor (Figure 4). Closures and permits determined the economic life of the WBGs after 1994 and were the main reason for the deterioration in living standards by 18% between 1994-1996 and the rise of unemployment to an unprecedented level of 30% in 1996 (MAS 1997).

Article VII.1 of the EP entitles Israel to close its borders whenever it deems it necessary after informing the Palestinian side of this measure. In fact, the Palestinians were never informed. The JEC never met in periods of closure and whenever the issue was raised, nothing was subsequently done about it.

4.2.3 Failure of the EP to Guarantee Labor Mobility

If closure and security considerations were to be given such a prominent role in the interim period, one could argue that *no* economic agreement could have been applicable. However, it is important to bear in mind that security priorities had been influencing labor flows since 1991. Closure and permits were already determining the access and number of WBGs workers going to Israel while negotiations were taking place in Paris. Thus, if the EP was to be the *only* document to govern labor movements in the interim period, it had to ensure that economic priorities were protected rather than subjected to Israeli security/political considerations. In fact, the EP has shortcomings as a reference document due to its weak commitment to the free movement of labor and its failure to cover all issues pertaining to labor mobility. In particular, it does not address the issues of *permits* and *rights of entry* into Israel. Nowhere does it discuss how economic priorities will be protected in light of security concerns.

The issues of permits and access were covered in other parts of the peace agreements, namely in the Protocol of Redeployment and Security Arrangements (PRS) and the Protocol concerning Civil Affairs (CAP).²⁵ The PRS discusses the entry of persons into Israel. Article IX clearly states that Israel alone has the right to close its crossing points, prohibit or limit the entry of persons into its areas, and determine the mode of entry. When it comes to workers, this has basically meant security-checked IDs and work permits.

²⁵ These two Protocols were negotiated with officials from the Civil Administration and the Defense Ministry. Their content and prerogatives were elaborated in more detailed ways during 1995, just before the signing of the Oslo II agreement. No economic experts or officials were present during these negotiations.

The Protocol on Civil Affairs clearly specifies that the granting of permits is the prerogative of the Joint Civil Affairs and Co-operation Committee (the CAC) (CAP, I.c.4). Article 11 specifies that Israel will issue the necessary permits upon receipt from the Palestinian side of details of workers seeking jobs in Israel and the settlements (Article 11.3).

4.2.4 Access Governed by CAP, not by the EP: Labor Mobility determined by Security rather than Economic Issues

The inherent deficiencies of the EP as regards labor flows meant that the access of labor was governed in the interim period by the Protocol on Civil Affairs. In fact, the CAP supersedes the EP in this aspect in four main ways:

- Firstly, it handles the issue of permits without which workers cannot enter Israel *and/or the settlements* (Article 11.2). The EP only talks about workers in settlements in relation to income taxes. Their recruitment and employment is not discussed.
- Secondly, the CAP handles the issue of the *transfer of authority* on labor issues from the Israeli Civil Administration to the Palestinians (Article 11.1, 11.2 and 11.3). This includes the organization of labor flows as well as the transfer of the offices and prerogatives of the Israeli employment offices in the WBGs. The EP does not define the mode of transfer of authority. This was left to the CAP, with its implementing agency - the CAC. This committee was composed largely of security and civil administration personnel, not economists. The transfer of authority regarding labor issues took place between the labor department of the Israeli Civil Administration (which is responsible to the Israeli Defense Ministry) and the newly formed Palestinian Ministry of Labor, under the supervision of the CAC.
- Thirdly, it refers to the social rights of workers in Israel. Article 11 of the CAP (paragraphs 4, 5, 6) reiterates Israel's commitment to maintain benefits currently granted to workers, but also specifies that the Palestinians will provide a list of all Palestinian employees who have health and pension rights in Israel. This represents a more detailed duplication of the stipulations of Article VII of the EP (Chapter 4). Although the CAP mentions that "issues relating to the placement and rights of Palestinians employed in Israel are dealt with in Article VII of Annex V (Protocol on Economic Relations)", it does not explain how both Articles can be harmonized in practical terms.
- Fourthly, in contrast to the EP, Article 11 of the CAC clearly establishes a specific ***Joint Labor Committee***, whose task was to

organize the implementation of employment-related issues (Paragraph 5). This implied the organization of labor flows to Israel (number of permits, details of workers) as well as handling matters related to workers' rights in Israel (paragraphs 2, 3, 4). In practical terms, the Joint Labor Committee was formed of representatives of the Palestinian and Israeli Ministries of Labor, Israeli Civil Administration, and security officials. It was accountable to the CAC and not to the JEC. No co-ordination took place with the JEC to discuss labor issues, even if the latter was informed of the outcome of the meetings.

Once the CAP was established as the reference document on labor issues, access to Israel ceased to be an economic question and was determined purely by Israeli security considerations. The 1991 security measures were thus further legitimized rather than amended in the interim period. This was detrimental to the smooth flow of labor and to the role of the EP as the sole document governing economic relations in the interim period. Labor movements became dependent not on the economic interests of both sides, but rather on what the military establishment in Israel defined as security. Palestinian-Israeli cooperation in labor management was not based on joint economic interests. The function of the Palestinian side was reduced to providing lists of Palestinians seeking employment (CAP, 11.2, 11.3).

4.3 Limited Success of Security Measures

Since 1995, the CAP has governed the access of labor to Israel. Permits were issued upon request from the Palestinian side while the Israeli Employment Service continued to monitor the labor supply. Israel persisted in closing borders whenever it deemed it necessary. This measure did not violate the EP or the PRS.

Yet, security measures did not prevent suicide attacks on Israel, nor end the demand for Palestinian workers in Israel. While Israel justified its use of closures to protect its citizens from suicide attacks, the military establishment admitted that these measures did not provide an effective means of controlling entry into Israel. Moreover, the duration and repercussions of such measures were not always justified on economic or security grounds (Sabbagh 1998). Closures often became a political tool to put pressure on Palestinian society and leadership. Suicide bombers

were not workers and closures had a direct effect in increasing poverty and reducing standards of living in the WBGS (MAS 1997). This, in turn, increased militancy and opposition to the peace process. Closures run counter to the aim set out in the preamble of the EP, namely that “both parties shall cooperate.....to establish a sound economic base for (their) relations.”

4.3.1 Is there a Bias towards WB Workers and Employment in Settlements?

Israeli policies did not fulfill their objectives. In terms of control over labor flows, available data reveal that Israeli measures have been effective in controlling certain workers more than others. In particular, the permit system has been effective in controlling the number of Gaza Strip workers. The Erez border between Israel and the Gaza Strip has been more stringently controlled than borders between the West Bank and Israel. While Gaza Strip permit holders could not access Israel, in the West Bank the number of non-permit holders continued to increase (Figure 3). These developments suggest that the replacement of Gaza Strip workers by West Bankers is being facilitated by the Israeli authorities. (The underlying political reasons behind this development are worth further exploration.)

The permit policy has not always been implemented uniformly. Since the Oslo agreement, permits for workers in settlements have been different from those for workers employed in Israel. Based on figures available on legal workers, workers in settlements represent one third of all WB permit holder workers (Figure 4). In general, work permits were more accessible for workers in settlements than for workers seeking employment in Israel. Permits for settlements were given to those of 18 years of age and unmarried while for Israel only married workers, 23 years and older could be hired. Moreover, many workers could access the settlements simply with the magnetic card that proved their security clearance. Access to Israel was difficult without a permit shown at the checkpoints. In situations of limited closure, i.e. when movement to Israel is forbidden but movement within the West Bank is possible, workers might find it easier to work in a settlement than to go beyond the Green Line. This indicates that it is easier for an employer to hire workers for the settlements than to work in Israel. These workers are also cheaper since employers in the settlements do not pay any of the social benefits they are required to pay for workers in Israel. These differences suggest that the Israeli government is facilitating certain forms of employment more than others.

Last but not least, despite all attempts to reduce the presence of illegal workers for security reasons, the numbers have continued to grow. As shown in Figure 5, the share of WB workers with permits fell to 36% by 1998 while the number of illegal workers has increased. Israeli demand for cheap WBGS workers has not been quenched, despite the presence of overseas workers. It is simply being redirected to concentrate on workers from the WB and for work on the settlements. These are important developments that need to be considered by policy makers.

4.4 Conclusion

Since 1994, the “normality of labor movements” has not been maintained. This is largely because closure and security considerations have determined the access of labor to Israel in the interim period. The recourse to such measures was legitimized in the EP. The predominance of security was institutionalized in the Protocol of Civil Affairs, which in practical terms, became the reference document governing labor flows in the interim period. The EP failed to alter this imposed reality, largely because of deficiencies in its scope and because economic considerations were not given precedence over Israeli political objectives. In practice the CAC, rather than the JEC, became the implementing agency for all labor matters.

5. The Regulatory Framework of Labor Mobility in the Interim Period: Implementation in Practice

In accordance with Article VII.1 of the EP and Article 11.1 of the CAP, the Palestinian Ministry of Labor took over the old Israeli employment offices located in zone A and became responsible for workers in zones A and B (93% of the population). This transfer of power meant, in principle, that the Palestinian authority could participate in the management of labor flows. Both the EP and the CAP envisaged that the Palestinians and Israelis would cooperate in the interim period in order to facilitate a smooth flow of labor. How far this actually occurred in practice will now be assessed. The priorities of the parties involved, as well as the functioning of the Joint Labor Committee, will also be reviewed.

5.1 Limited Scope for Palestinian Intervention in Labor Allocation

In practice, the scope for Palestinian intervention in the management of labor flows in Israel has been very limited. The Palestinian side was never responsible for determining the age of workers, nor their marital status. These matters were left to the Israeli employer and the Israeli security forces, which determined whether a worker was admissible from a security point of view. The Israeli Employment Service remained responsible for administering the demand for labor into Israel. In principle, both the Israeli and the Palestinian employment offices were supposed to coordinate the supply and demand of labor. In practice, the Palestinians offices never selected the workers.

Over the past five years, the function of the Palestinian Ministry of Labor has been simply to help Palestinian workers to obtain their work permits. The Palestinian employment office passes workers' requests for employment in Israel to the Civil Administration employment officer at the CAC Liaison office.²⁶ After undertaking the necessary security checks and verifying that no Israeli worker would be available for the job, the Israeli officer issues the work permit. This permit is then transferred to the

²⁶ This office was responsible for coordinating security and civil affairs matters between the Palestinians and Israelis.

Palestinian Ministry of Labor, which in turn gives it to the worker. The whole process simply increases bureaucratic paperwork and waiting time for the worker. Many workers prefer to go directly to the liaison officer, thereby bypassing the Palestinian Ministry of Labor. Workers from zone C, as well as those seeking employment in settlements, go directly to the CAC liaison office for their permits.²⁷

From a political point of view, the new arrangement has the advantage of reducing contacts between workers and Israelis. From an economic point of view, it increases the transaction costs required for legal employment in Israel.

5.2 Joint Labor Committee Meetings: A Forum for Exchange

The EP set up the Joint Economic Committee (JEC) as its implementing agency (Article II). In practice, this committee met only 10 times between 1994 and August 1996 and rarely discussed labor matters. While a labor subcommittee responsible to the JEC should have emerged to supervise the implementation of Article VII, it never saw the light of day. This is largely because of confusion as regards who is the responsible party for labor matters (Civil Administration or the Ministries of Economics and of Labor, etc) and of competition between the various ministries as to whom should take over these responsibilities.²⁸ By September 1996, the Joint Labor Committee established under the auspices of the CAC confirmed itself as the only implementing body of the labor articles.

Procedures

According to Palestinian records, a total of 15 meetings were held between September 1996 and June 1998, giving an average of 7-8 meetings a year. Each party would prepare its agenda and call a meeting whenever it deemed necessary. The meetings were attended by security personnel as well as Ministry of Labor officials. Sometimes Israeli lawyers and economic advisors were also present but the Palestinian party did not

²⁷ The Palestinian Ministry of Labor stopped handling permits to work in settlements in July 1997 in view of its policy of opposition to such employment.

²⁸ According to some Palestinian officials, the responsibilities of the various agents (Ministry of Labor, Civil Administration, Ministry of Economics on both sides, the CAC) were not always well defined or coordinated all through the period of negotiations and implementation of the various protocols. This confusion did not help the performance of the Joint Economic Committee or strengthen its powers.

include in its delegates any lawyers or economists. The JEC was informed by resolution of matters discussed at the Joint Labor Committee. These meetings could never take place directly since the head of the Palestinian Ministry of Civil Affairs and the head of the Israeli Civil Administration determined when and where the meetings were to be held. In other words, procedures were centralized and again subject to the security priorities of Israeli officials. There were no regular meetings with set agendas.

Agenda topics

The main topics of concern on the agenda were border closures, employment in the settlements and legal recruitment. However, discussions on closures only took place after a closure had taken place and no substantial changes were ever made. Israel always expressed the intention to maintain normality of movements provided security was guaranteed.²⁹ There was no scope for outside intervention or arbitration to reduce the duration of closures or to allow a limited flow of workers during these periods. The Palestinian side was also unable to exert any influence on the employment of workers in the settlements. By July 1997, the Palestinian Ministry of Labor decided to boycott the handling of work permits for settlements in protest against Israeli construction in the WBGS. There was no discussion on changing the nature of permits to workers in the settlements in order to make them less easy to obtain than permits to Israel.

The main priority for the Palestinians, in so far as their minutes to the JLC meetings reveal, was how to increase the number of workers allowed to enter Israel and how to combat illegal workers.³⁰ In the Joint Labor Committee they suggested a number of ways to achieve these goals. They managed to convince the Israelis to lower the age limit for Palestinian workers from 28 to 23 years. They also requested that working hours and the duration of permits be increased. In late 1997, the request to increase the number of workers employed in Israel and permitted to sleep overnight there was granted by the Israelis. To facilitate the movement of workers, the Palestinians also suggested that security requirements for permits be relaxed, that the validity of permits be extended, and that entry points should not be specified in permits.

²⁹ Minutes to the meetings held by the Joint Labor Committee on October 28th 1997.

³⁰ According to the Palestinian minutes of the JLC meetings and discussions with various members of the Committee.

Israeli officials were also keen to increase the number of legal workers. They were receptive to Palestinian ideas and agreed to some as a sign of goodwill (e.g. the reduction in the age limit for workers and increasing the number of those permitted to sleep in Israel) whenever they deemed that security would not be compromised. Israeli officials also suggested the creation of small, specialized committees to deal with specific issues.³¹ In fact, these committees did not always meet nor were they empowered to take any decisions. The Israelis welcomed Palestinian cooperation on security issues, but in such a way that the Palestinians were in danger of becoming a security service for the Israelis.³² Available documents seem to suggest that the Israeli authorities became increasingly aware that the only way to reduce illegal workers was to combat illegal channels of recruitment. As stated in Chapter 2, this included tackling the issue of illegal labor contractors. Before dealing with this topic, the issues at stake as regards legal employment need to be clarified.

5.3 Legal versus Illegal Employment: What is at Stake?

The importance of encouraging legal employment stems from the fact that it protects workers from discrimination and exploitation by Israeli employers and labor contractors. However, from an economic point of view, employers, workers and governments do not share the same interests nor reap the same benefits.

From the point of view of employers, workers without permits are less expensive than permit holders. This is largely because employers do not have to pay them any of the social benefits to which legal workers are entitled. This can amount to up to 25-30% of a worker's gross salary (Box 3).

From the point of view of the worker, it is difficult to establish whether he is always better off as an illegal worker in the short run. Available wage

³¹ This involved the creation of a committee to increase the number of workers, one to improve the image of Palestinian workers in Israel, and a third to find ways to reduce illegal employment and encourage the number of permit holders. A security committee was also formed to discuss means to maintain normality of movements during periods of closure. Minutes to the meetings on October 28th 1997, March 6th 1998, March 24th 1998.

³² In the meeting of October 28th 1997, Mr. Elie Paz, deputy director at the Israeli Ministry of Labor, suggested that Palestinian officials be present at Israeli/Palestinian checkpoints to check on workers and their permits.

data do not distinguish between workers' income by skill, occupation and legal status. In principle, for a given wage rate, an illegal worker takes home a higher income than a legal one. However, in practice, wages vary according to skill, access to the Israeli labor market and alternative employment options. Judging from the available data, PCBS labor surveys reveal that the average wage of WBSG workers in Israel is in the *lower* range of the Israeli minimum wage. This amounts to a total of NIS 100 per day (i.e. US \$28). This is the take-home income (i.e. wage after deductions) of legal and illegal workers, skilled and unskilled. Legal unskilled workers in Israel would earn at least a gross income of NIS 104, which translates into a take-home salary of NIS 86 per day (US \$23.8) (Box 3).

An unskilled worker is better off as a legal worker. In the long run, he gains all the social benefits and pension rights to which he is entitled. In the short run, he does not have to pay labor contractors any fees for finding him a job. Discussions with contractors reveal that illegal unskilled workers earn between NIS 60-90 a day. They therefore earn on average less than legal workers.

For skilled workers, it cannot be established whether they are better off as legal. Field data reveal that they earn a higher take-home wage when illegal (between NIS 100-200 per day). However, they lose all social benefits to which they are entitled. Many workers opt to register as legal unskilled workers and earn all income above the minimum wage in cash. This sort of arrangement has increased over the past years, especially with the strictness of the permit policy. Many employers also prefer to hire skilled workers under such arrangements as it secures them a steady supply, while at the same time reduces the cost of their employment.

From the PNA's perspective, it is in its interests to encourage legal employment since it protects workers from exploitation while at the same time ensures the transfer of some wage deductions to its Treasury. The Israeli authorities also encourage legal WBSG employment as it enables them to control the flow of workers through security pretexts. At the same time, it has financial benefits since one-third of the income taxes paid by legal workers in Israel remain in the Israeli economy after the EP. Moreover, so long as wage deductions are not transferred to the PNA, the Israeli economy reaps interest on the sums kept under its control.

It is important to stress here that the only cheaper alternative to legal employment in Israel is employment in the settlements. Legal workers in

the settlements earning the minimum wage would have a take-home salary equal to illegal workers. This is because, unlike workers in Israel, workers on the settlements do not pay for social security benefits.

5.4 Israeli Proposals to Curb Illegal Workers

Despite the benefits of legal employment, only 30-40% of West Bank workers have been employed legally over the past five years. Illegal employment remains an attractive option, especially for skilled workers, and is becoming a second option for unskilled workers. The deterioration in economic conditions in the WBGS means that workers prefer to be employed in Israel at below the minimum wage rather than be unemployed or earn a WBGS wage. The average wage in WBGS is on average only half that of the Israeli minimum wage (PCBS 1998). The risk is that unskilled illegal workers do not always escape exploitation by labor contractors.

In the latest Joint Labor Committee meetings, the Israelis proposed a new system of labor management to ensure an increase in WBGS flows to Israel, as well as to guarantee legal employment. The proposal was made by the head of the Israeli Constructors' Association and was adopted by officials from the Israeli Ministry of Labor. It was intended to safeguard security as well as the interests of large Israeli employers.

The Israeli proposal basically suggests that labor flows to Israel be organized by labor contractors who are themselves also workers. Rather than relying on requests from individual workers for employment in Israel, the new proposal envisages that the labor contractor will assume this responsibility. He would present a list of names of workers to the Israeli employer in whose name the permits would be issued. The labor contractor would be a team leader, would supervise the performance of workers and would be responsible for their performance to the employer. This person would have managerial and negotiation skills as well as be a skilled worker. He would be paid the same wage as other workers, "but would have extra privileges given that he works more".³³

The Israeli proposal also envisaged that the whole recruitment process would be run by a private firm, rather than organized by the present Employment Service. This firm would put workers in contact with

³³ Based on the minutes of the meeting on March 12th 1998.

employers and recruitment would be done via the team leader. Permits would be issued in the name of this recruitment firm.

Viable or not, and to whom:

The proposal was met with general apprehension from the Palestinian side. While the Israelis said the private recruitment firm would coordinate with the Palestinian Ministry of Labor, it did not specify how. Palestinians officials were concerned that this proposal would eliminate their role (and that of the Israeli Employment Service) as mediators. They were also worried about how the social contributions of workers would be protected, collected and transferred under the new organizational framework. Palestinian officials had the impression that the Israeli proposal was simply a means to enable an Israeli construction company to secure a large pool of controlled and cheap labor.³⁴

If approved, the proposal would formalize a phenomenon already taking place. Labor contractors who are also team leaders already exist in the construction sector. However, by giving them legal status and responsibility for all contacts with the employer, their power would be further consolidated. A legal framework must be set in place to ensure that contractors do not exploit workers since it would be dangerous to encourage such a system. The worker would not be free to change contractor or employer at any time and the market would therefore be inflexible.

If anything, the proposed system would enable the Israeli Employment Service to liberate itself from its responsibilities towards WBGS workers. The creation of a private recruitment firm might well be in line with developments taking place in Israel and the WBGS as regards labor recruitment in general. Legal private recruitment firms already exist for Palestinians wanting to work in Israel. However, the Israeli Employment Service remains an important regulating institution since it supervises workers' rights and collects the deductions from their wages. If the proposed private firm is to take on the responsibilities of the official Israeli employment agency, it is of paramount importance to explain how workers' social contributions would be protected and who would collect and transfer them to the Palestinians. The legal framework and reference (Palestinian or Israeli) would also need to be specified. It is important to

³⁴ Based on conversations with Palestinian officials and minutes of their meetings with the JLC.

know whether the proposed firm would be monopolistic and if so what measures would be taken to prevent any rent seeking.

5.5 Conclusion

The scope for Palestinian intervention in the allocation of labor flows to Israel has been very limited for numerous reasons. To start with, countries which export labor rarely have a say in the management of their labor outflows. These are issues determined by demand and policies in the receiving country. In the Palestinian context, this reality was confirmed and manipulated in the name of security by the nature of the agreements signed. Chapter 3 explains that the labor provisions in the Oslo agreement did not clearly define the scope of Palestinian intervention. Article 11 of the CAP reduced Palestinian responsibility to providing lists of names of people seeking employment in Israel (Article 11.3). The fact that in practice the JLC was responsible to the CAC rather than to the JEC further marginalised the role of Palestinian economic interests. Nevertheless, the Palestinian employment office remains an important address for Palestinian workers, both for the defense of their rights and to claim their benefits. The work of the Palestinian Labor Committee would benefit from the presence of lawyers and economic advisors among its delegates.

The problem of illegal employment remains serious today. Israeli suggestions so far do not appear to be viable. The meetings of the various JLC subcommittees have provided a helpful forum for both sides to express their concerns and find ways to improve labor recruitment practices and protect workers. However, given that labor was institutionalized as a security rather than an economic issue, Israel has constantly set the agenda. The Palestinian side often found itself in the position of being on the receiving end, capable of objecting to proposals but not always of imposing something viable and applicable that would protect worker mobility. The Joint Labor Committee remains a forum for exchanging concerns, but there is no evidence of it being a useful agent to resolve economic issues.

Box 3: Legal versus Illegal Employment in the Construction Sector in Israel: What is at Stake?

It is difficult to know precisely whether illegal WBGS workers in Israel earn more than legal workers. This is because we do not have detailed wage data per workers' skills, occupation and legal status. PCBS labor surveys data reveal that the take-home wage (i.e. after social deductions) of workers in Israel was in the lower range of the Israeli minimum wage. In 1998, this would have amounted to approximately NIS 100 per day. This is the average daily wage for skilled and unskilled workers, legal and illegal. This happens to be in the lower range of the minimum wage rate paid for an *unskilled* worker employed *legally* in Israel. Unskilled workers form 50-60% of the total number going to Israel.

Take-home salary of legal unskilled worker per month

An unskilled, legal WBGS worker paid the minimum wage would take-home a monthly *net* salary of **NIS 1814**. This is because he has to pay **NIS 274** for social benefits.³⁵ These include:

	NIS	US\$
Wage Rate:	2088	580
Deductions:	274	76
National Insurance 2 (0.1%):		0.6
Equalization Levy 49 (2.33%):		13.5
Pension (5.5%):	115	32.0
Health Insurance 93 (93NIS):		25.8
Histadrut (0.7%):	15	4.1
Total Take-home Wage:	1814	504.0

Cost to the employer per month

The cost to the employer of hiring an unskilled worker legally in Israel would be at least **NIS 2689** per month. This is because the employer has to pay the legal worker's social payments, worth **NIS 601**. These include:

³⁵ He would not be paying income tax as he is not earning more than the minimum wage.

	NIS	US\$
Wage Rate:	2088	580
Social Payments:	601	167
National Insurance	5	1.5
(0.26%):		
Equalization Levy	71	19.7
(3.42%):		
Pension (12%):	251	69.7
End of service benefits	274	76.1
(13.1%):		
Total Cost:	2689	747.0

Cont...Box 3:

To whose advantage:

- From the employer’s point of view, it is less expensive to pay the worker NIS 2088 in cash rather than pay him the same wage as a legal worker. Thus, he would rather hire workers illegally or employ them in a settlement where he is exempt from paying any social benefits.
- From the worker’s point of view, it appears that in the short term he is better off as illegal, if he is skilled. This is because for the same wage rate (i.e. NIS 2088) his take-home salary is at least 13% higher than a legal worker. This is only the case as long he does not pay any exorbitant fees to the labor contractor, avoids any health and work accidents, and does not get caught. In the long term, he is better off as a legal worker.
- From the Palestinian and Israeli authorities point of view, legal employment is safer and more profitable. According to the EP, some of the social payments made by workers will be transferred to the PNA. Until they are transferred, Israeli authorities reap interest on them.

6. Deductions from the Gross Wages of Legal WBSG Workers in Israel

The major contribution of Article VII (and Article V.4) lies in the protection of the social rights of WBSG workers in Israel. As described in Chapter 3, legal Palestinian workers in Israel continued to be entitled to pension, health, and other social benefits. Moreover, the Article recognized that most of the payments made by workers to the National Insurance Institute were not reclaimable or accessible to workers. The establishment of the Equalization Levy and its transfer to the Palestinian Authority resolved a major leakage and source of injustice in this regard. Just as important is the fact that the Article defines the transfer to the Palestinian economy of social insurance payments made by workers and their employers in Israel after 1994. Income and health tax were to be transferred to the PNA while pension and national insurance sums were to be transferred and administered by a Palestinian social security institution, provided one was set up. Some benefits remained reclaimable only on an individual basis, as is the case with end of service social benefits (Table 5). As we shall see, deductions made from the gross wages of legal WBSG workers in Israel since 1994 represent significant sums of money.

In considering how far the terms reached in Article VII (paragraphs 2-9) have been implemented, it is important to assess the sums involved and what has been transferred so far. It is also important to evaluate how far the limited implementation has been the result of Israeli failure to keep to their commitments, or the failure of Palestinians to create the necessary institutions, or both. The role of the Joint Labor Committee in resolving problematic issues will also be reviewed.

6.1 Baseline Estimates of Workers' Claims

To assess to what extent commitments have been honored, it is necessary first to know the amount of deductions made from the gross wages of legal WBSG workers since 1994. Compared to 1991, the charges paid for social benefits changed somewhat (Table 5). In particular, the share of deductions made to the National Insurance Institute dropped by half by 1997. Other charges, except for pensions, changed slightly.

It has been impossible to collect sufficient data and information on the amount of deductions and claims made since 1994.³⁶ We have therefore made a baseline (minimum) estimate of the amount of workers' wages and of the sums deducted for social security in Israel. This was undertaken to obtain the *lowest realistic estimate* of the claims that Palestinian workers, the PNA and institutions could make from Israel. This then enables a comparison to be made between claims and the actual transfer of funds carried out so far.³⁷

In making the calculations, figures on the number of legal workers were taken from the Israeli Employment Service. These are lower than the figures on permits reported by the Palestinian Ministry of Labor for 1996-98 by 25%. Moreover, we only took account of *employed workers with permits*.³⁸ In the Gaza Strip, only a third of workers with permits in 1996 and 1997 could actually obtain access to Israel.³⁹

In calculating gross wages, it was assumed that 60% of legal workers were unskilled and earning the Israeli minimum wage, which is the legal wage below which no worker should be employed. This amounted to a daily wage of NIS 104 in 1998 (US \$29). Figures on unskilled gross wages were calculated by taking the daily gross minimum wage rate and multiplying it by the actual number of workers and the number of working days per month, as reported by the PCBS labor force surveys. On average, WBGS workers in Israel worked between 18-20 days per month. 40% of workers were considered to be skilled and earning a daily wage of NIS 150 (US \$42 in 1998 rates). This amounts to 50% more than the wage of an unskilled legal worker.⁴⁰ In calculating yearly wages, account was taken

³⁶ The Israeli Payment Division at the Ministry of Labor, responsible for all WBGS wages, has refused to give any information on the amount of wages earned by WBGS workers or of the contributions made to the various social security institutions. The Palestinian side has never provided estimates of workers' claims in Israel.

³⁷ Information on the transfer of funds was collected from the Palestinian Ministries of Labor and Finance, the Israeli Ministry of Finance, trade unions, NGOs involved in workers' rights in Israel, and the joint IMF and MOF *Report on Fiscal Development in the West Bank and Gaza Strip*.

³⁸ Workers with permits not working in Israel due to closure do not get any social payments.

³⁹ The labor force survey could help to locate the actual number of people who worked in Israel.

⁴⁰ PCBS data reveal that skilled workers formed as much as 50% of the labor force in 1997, while ICBS data for 1992 show that only 40% were skilled. Many skilled workers might be earning as much as NIS 200-250 per day. However, we opted for the lower percentages and figures since many legal skilled workers do not declare all they receive in cash and often earn more than the minimum wage or the reported wage.

of the effect of closure in reducing the number of working months. Months with more than 15 days of closure were considered to be non-working months. The difference between the Gaza Strip and West Bank was also accounted for (in the number of workers, days of closure) (Tables 6 and 7). As a result, the lowest estimates for wages, skilled workers and number of working days were used.

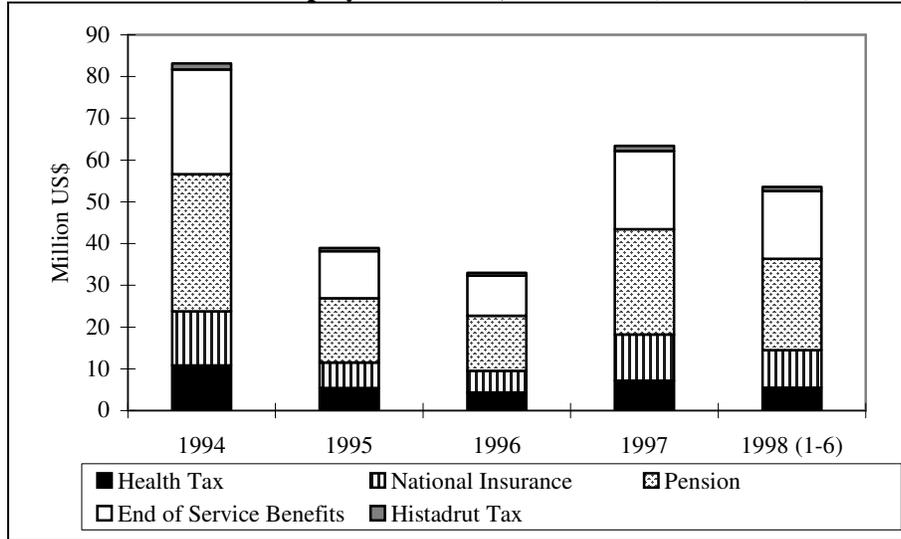
Social deductions were calculated from gross wages. In calculating the different social payments paid by WBGS workers and their employers in Israel, account was taken of the different tax rates across sectors. The 1997 rates were used. In our estimates of payments, only income tax was not calculated because it varies greatly depending on earnings and family conditions (marital status, number of children, etc). Precise information on this was not available.

The estimates made are therefore the minimum amounts reclaimable by Palestinian institutions and individuals. Tables 6 and 7, as well as Figure 5, show that gross wage deductions continue to represent sizable sums of money. Between 1994-1997, they represented on average 1-2% of the WBGS yearly GDP. As expected, they fluctuate with the number of workers and working months. In 1996, the effect of closure was quite pronounced as contributions dropped by more than half between 1994 and 1996.

After deducting two-thirds of the administrative costs from the sum collected, Israel is supposed to transfer the payments to the Palestinian economy. Of the total sums estimated, as much as 28% should go to the PNA. This covers health and the Equalization Levy, but excludes income tax. As much as 39% should be transferred for pensions to the Palestinian social security institute and 1% for Basic National Insurance. A further 2% should be transferred from the Histadrut to the PGFTU. The largest contributions are therefore for the pension, followed by end of service benefits related to work experience and length of employment.⁴¹ The end of service payments form 30% of the total sums deducted but they are not saved in any fund. They are reclaimable by workers from employers upon individual request.

⁴¹ These two contributions are particularly large because tax rates are high, especially in the construction sector which absorbs 50% of all WBGS workers in Israel (Table 5).

Figure 5: Baseline Estimates of Deductions from the Wages of Legal WBSG Workers Employed in Israel, 1994-1998 (million US\$)



Source: Table 6.

6.2 Transfers to the PNA: Significant Contributions

Health and income taxes:

In accordance with the stipulations in the EP, income and health taxes are actually being transferred to the PNA. Income tax is, in general, low given that the majority of Palestinians earn the minimum wage and are thus exempted from it. Health tax has been more substantial than income tax (Table 6, Figure 5).

Compared to various types of revenue clearance received from Israel, such as VAT or customs clearance, health and income tax are small. They form 2-6% of total revenue clearance between 1994-1998. This translates into less than 2% of total PNA revenues. However, compared to locally imposed taxes of a similar kind, they are not negligible (Table 8). Income tax from Israel forms between 7-11% of total income taxes collected locally (PMOF budget). Health tax imposed on WBSG workers employed in Israel amounted to 33-50% of total private health insurance taxes collected in the areas under PNA control. At present, the health tax from Israel is transferred to the Palestinian Ministry of Finance, who then transfers it to the Ministry of Health. This money finances between 7-10% of the Ministry's expenditure.

The transfer of income and health taxes has been steady and considerable since 1995. Nevertheless, there are indications that the transfers taking place are still below their estimated levels (Table 9). With regard to health tax, as much as US \$3.4 million have been paid in by workers but have not been repatriated to the Palestinian economy.

This is puzzling as health insurance is a flat tax and this figure is the lowest possible calculation of the number of working individuals and months. This discrepancy needs to be clarified and resolved as soon as possible.⁴²

The Equalization Levy: Not transferred

Contrary to the stipulations of the EP, the Equalization Levy has not yet been transferred to the PNA. Israeli officials at the Payment Division of the Ministry of Labor claim that this money has been placed in a special account in Israel (Kav Lavoed 1997). It will be transferred to the PNA only after a Palestinian social security fund, similar to the Israeli National Insurance Institute, has been established. Another condition for the transfer is that the fund will publicize its operations and procedures and will be supervised by Palestinians, Israeli and international regulators. None of these conditions were specified in the EP. Israel decided on them unilaterally.

6.3 Transfers to Palestinian Social Security Institutions: Not Yet Carried Out

National Insurance fund

At present, WBGs workers continue to claim their Basic National Insurance benefit from the Israeli Payment Division at the Ministry of Labor. These sums have not been transferred to the Palestinian economy as a Palestinian social security institute has not yet been set up. This body needs to be established promptly to facilitate the transfer of these payments as well as the transfer of the Equalization Levy, which is part of the payments made to National Insurance.⁴³

⁴² This could be due to differences in calculating the number of working months in 1994, as well as due to calculations of administrative costs (to be deducted from the sum collected). Further details are urgently needed on this matter.

⁴³ Although not specified, Article VII gives scope for the transfer of National Insurance payments, both the Basic and the Equalization Levy, to an eventual social security institution in the WBGs. Paragraph 2 talks about the implementation procedures that need to be set up between the Israeli National Insurance Institute and the appropriate

Pension deductions

Pension contributions are the largest type of contribution, representing 39% of the total gross wage deductions collected. Compared to locally accumulated pension funds, the sums involved are large. For example, the only pension fund in the Gaza Strip held a total of \$180 million at the end of 1997 (MAS; Hamed et Al-Botmeh 1997).⁴⁴ This can be compared with estimated pension contributions of US \$106 million by WBGS workers between 1994 and 1998 (Table 6). However, these sums have yet to be transferred because the Palestinians have not set up their own pension fund. The contributions are presently kept in Israeli institutions, accessible to workers on the basis of individual requests.

6.4 Transfers to Individuals: Reclaiming Payments

The absence of Palestinian social security institutions has meant that workers have only obtained some of their benefits through their own individual initiative.

Under the new reality created by the EP, Palestinian workers were given two main channels to make claims. They can request their social benefits from the Palestinian Ministry of Labor, who in turn transfers the request to the Israeli Payment Division at the Israeli Ministry of Labor. Alternatively, they can pursue a legal suit in the Israeli courts. In both cases, if successful, workers gain access to end of service social benefits and Basic National Insurance benefit (if applicable). They can also claim their pension payment as a lump sum at the end of service. However, if they are at retirement age and have spent 10 years working legally in Israel, they receive their pension payment from the Israeli Payment Division. In all cases, workers *do not* receive any of the equalization payments, health tax or Histadrut payments.

Reported figures from the Palestinian Ministry of Labor indicate that an increasing number of workers are submitting requests for their end of service social benefits. In 1997, 17,000 requests were made and \$8

Palestinian social insurance institutions concerning the scope of WBGS social protection in Israel. Paragraph 5 deals with the transfer of pension and other social benefits to the Palestinian authority *and* its relevant social institutions.

⁴⁴ This fund covers public sector workers. Before the PNA assumed authority, it included 7500 people. By 1997, 16,000 workers were contributing to this fund (MAS; Hamed et Al-Botmeh 1997).

million were transferred to the workers concerned. This accounts for a third of the sums estimated to have accumulated over that period (Table 6). In addition, workers can only receive end of service social benefits if they make their claim within 2 years of the end of their contract in Israel.

Workers can also claim their benefits through legal suit, but this is not always a desirable way. In general, such procedures are time-consuming and expensive. Israeli law has now made it obligatory for workers to pay a non-refundable deposit of NIS 1000-3000 before submitting a legal claim. This can be equivalent to a worker's monthly wage and workers often do not have this type of cash available. Moreover, such channels do not always provide an effective means to obtain workers' benefits.⁴⁵ Legal suits are often the only channel available to illegal workers, who are already deprived of all the social benefits to which legal workers are entitled. Through the courts, they can be compensated for any unpaid wages and all wages below the minimum wage. Legal suits are also the only option available when workers have been fired by their employer without being paid their benefits.

6.5 Transfers to the PGFTU

In accordance with Article VII.8, the Histadrut and the Palestinian General Trade Union (PGFTU) signed an agreement on March 5th 1995 concerning the transfer of contributions made by WBSG workers. The agreement stated that the Histadrut in 1993 would transfer to the PGFTU half of the 1% paid to it by WBSG workers (Article 2). The other half is to be used by the Histadrut for benefits for WBSG workers. It was also agreed that payments for the period from September 13th 1993 until the signing of the agreement would also be transferred. Pre-1993 contributions were subject to discussion (Article 5).

Confusion and imprecision

From the very beginning, the agreement between the two trade unions was flawed by the lack of specific detail. To start with, WBSG workers pay only 0.7% of their wages to the Histadrut, not 1%. Once the issue of starting the transfer of money to the Palestinian side arose, each party

⁴⁵ There are insufficient NGOs or lawyers working on such issues. Kav Lavoed, an NGO working on workers' rights in Israel, defended the cases of 127 WBSG workers in 1997 and obtained compensation worth US \$200,000. This is an indication of the sums available (Kav Lavoed 1997).

produced a different estimate of the amounts due. So far, the Histadrut has paid only US \$2 million (Table 10).

The Histadrut and the PGFTU are now trying to sign a new agreement to settle definitively the past debt and find means for future co-operation. Pre-1993 claims are, according to the Histadrut, not open to discussion.⁴⁶ Since September 1998, a solution was found for the PGFTU claims. The Israeli Payment Division at the Ministry of Labor has agreed to transfer monthly to the PGFTU 50% of the payments made by workers to the Histadrut. These contributions have, in any case, been collected at the Payment Division since 1970.

What is done with the money

The money transferred to the PGFTU is being used to hire lawyers to defend workers' claims. In 1996-1997, US \$700,000 (NIS 2.5 million) worth of benefits were reclaimed. The PGFTU uses these funds to defend the rights of both legal and illegal workers employed in Israel and industrial zones.

The other 50% that remains with the Histadrut has been used for benefits for WBGs workers. This includes providing training and hiring lawyers to pursue the legal cases of WBGs workers. The PGFTU and Histadrut signed a legal agreement (February 20th 1997) to cooperate in defending the rights of WBGs workers. So far, 4 Histadrut lawyers are helping in cases filed by the PGFTU in Israeli courts. According to PGFTU representatives, the legal agreement has helped to provide needed services to Palestinian workers. However, the agreement only covers legal workers as the Histadrut does not defend illegal workers.

6.6 Limited Success in Implementation: The Causes

The terms of Articles VII and V.4 with regard to the transfer of workers' savings to the Palestinian economy have been applied to a limited extent. In accordance with the EP, Israel has transferred income and health tax to the Palestinian authority. The consistency of the flows since 1995 suggests that the transfers will continue. However, there are still some discrepancies between the amounts deducted and those transferred.

⁴⁶ The Histadrut claims that that it cannot transfer more than this amount in view of its own serious financial crisis. It also argued that all pre-1993 payments are not negotiable in the context of the EP.

Without having actual access to records of workers' wages, it is not possible to know whether this discrepancy is due to administrative costs or another reason. Greater transparency is needed in all information concerning the size of WBGS wages and the transfers being made to the Palestinian economy.

The Joint Labor Committee has, at times, tackled the issue of workers' social rights in Israel. The Palestinians have often asked for the transfer of the Equalization Levy but Israel has refused until a Palestinian social insurance institute is created. The PNA has also asked for access to information on the actual sums being deducted from the wages of WBGS workers but Israel has argued that these are matters of its own prerogative.

The major hurdle in the implementation of these Articles is in the transfer of pension and National Insurance funds. These have not been transferred because the Palestinian side has failed to establish its own social insurance institutions. In fact, the social security system in the WBGS is far from being developed or institutionalized (MAS; Hilal et al 1998). The PNA is currently drafting a social security law that is still in the process of review. This law envisages the establishment of a national social security institute responsible for insurance against work accidents, disability and pension rights.⁴⁷ In other words, it does not separate pension rights from other social security rights. The law does not tackle the issue of the social rights and benefits of WBGS workers in Israel, let alone discuss means to integrate them into the present system.

It is of paramount importance that Palestinian social security institutions be created soon if the Palestinian economy is to benefit from the substantial savings that are presently being kept in Israel. The creation of a special social security fund for workers in Israel could be a way by which these savings could be transferred safely and without further delay. However, no transfer should take place before establishing clear legal procedures that protects workers' access to their benefits no matter where they are saved.

⁴⁷ Health insurance will continue to be covered by the government health scheme, managed by the Ministry of Health.

6.7 Conclusion

If Article VII failed to guarantee the normal movement of labor, it did succeed in protecting the social rights of workers in Israel. It remained the reference document on such matters for the interim period and therein lies its importance and validity today. It provided a number of positive points. It recognized workers' rights and accepted to transfer funds accumulated after 1994 to the Palestinian economy. It thereby gave the Palestinian economy access to substantial sources of savings. It remains unfair that pre-1993 payments can never be reclaimed.

In terms of implementation, income and health tax are being transferred to the PNA. Compared to similar local sources, the health tax is particularly important. However, more transparency and information are needed to monitor better the transfer of funds and their access by workers. The more substantial pension and national insurance payments have not been transferred because the Palestinians have not yet created the institutions required, nor provided the legal framework necessary before any transfer can be made. The process might be long, but it remains in the interests of the PNA to create a special pension and social security fund for workers employed in Israel. More data and research is urgently needed in this area.

7. Conclusions and Policy Recommendations

Five years have now passed since the signing of the Protocol on Economic Relations in Paris. So far, the labor-related articles in the interim peace agreements have only been partially applied.

The normal movement of labor has only taken place when the Israeli government and security services have decided that it was permissible from a security point of view. The policy of closure has often been used in an arbitrary way, causing WBGS labor flows to Israel to fluctuate according to security rather than economic considerations. The repercussions of this policy on the WBGS economy have been quite devastating, causing high unemployment and negative GDP growth (MAS 1997). The Economic Protocol has not given the Palestinian side any means to effectively counter these unilateral actions. The vagueness of the text with regards to labor movements did not help the weaker party in the negotiations.

Israeli policies have had serious implications on the nature of WBGS labor flows to Israel. The policy of closures and permits has been used most stringently to reduce the supply of Gaza Strip workers rather than those from the West Bank. While only legally registered workers from the Gaza Strip were permitted to enter Israel, illegal workers from the West Bank have steadily increased in number and shares over the past five years. At the same time, labor flows to the illegal settlements have continued to grow. By 1998, labor flows reached a peak of 110,000 workers (a figure previously attained in 1992) but the majority of workers were from the West Bank. These developments suggest that the replacement of Gaza Strip workers by West Bankers is being facilitated. The links between the West Bank and Israel are being further entrenched while those between the West Bank and Gaza Strip and the Strip and Israel are being severed. The political foundations and implications of these developments need to be further analyzed and countered.

The Palestinian side has not had much scope to intervene in the allocation of labor flows to Israel. Employers have continued to determine the size of the Palestinian labor force they require while the Israeli military have determined who and how many WBGS workers are entitled to cross the Green Line. The Palestinians have been restricted from intervening for various reasons. To start with, as in the rest of the world, labor intake is determined by demand and by state regulations rather than by the country

that exports its labor. More important in this case, is the fact that labor has been institutionalized as a security rather than an economic issue. This has confirmed the supremacy of Israeli priorities and limited Palestinian intervention.

The Economic Protocol proved deficient as the definitive reference document relating to the management of labor flows. This was due to both structural weaknesses in its wording and problems of implementation. Structurally, the failure of the EP to tackle issues central to labor recruitment, namely the work permit system and security concerns, meant that it was superseded by the Protocol on Civil Affairs. Article 11 of the CAP confirmed the changes in labor recruitment introduced in 1991 and guaranteed the pivotal importance of Israeli security priorities. The labor committee, managed by the Civil Affairs Committee, took over the responsibility of implementing the labor resolutions. Its concerns were often to deal with security issues. The fact that labor became institutionalized as a security rather than an economic issue was detrimental to the Palestinians and to Palestinian labor. This institutionalization, however, was also facilitated by the weakness of performance at times. The parties involved failed to keep the Joint Economic Committee as the sole body responsible for the implementation of the EP and of its labor articles, and thus maintain issues related to labor on a purely economic basis.

The EP and the CAP have protected the social rights of WBGS workers in Israel, although in practice only some of the resolutions taken were implemented. Income and health taxes have been transferred to the PNA. The Equalization Levy, pension and National Insurance contributions have not yet been transferred. This is because the Palestinians have not established their own local social security institutions. These need to be established quickly in order to guarantee transfers. Moreover, the legal framework needs to be clearly specified in order to protect workers' rights and access to their benefits.

7.1 Future Strategy: Action to be Taken

In view of the preparations for the final status negotiations, the Palestinian side must set out its labor agenda clearly. A number of issues are pressing and action needs to be taken.

7.1.1 Labor Flows to Israel

In the short term, the Palestinian economy will continue to rely on the Israeli labor market to absorb its growing labor force. Israeli demand for this labor continues to grow despite the presence of foreign workers. The creation of industrial zones in Palestine is intended to alleviate unemployment in the Palestinian economy, but their employment capacity remains small in view of the fact that more than 30,000 workers enter the WBGS labor market per year. The only alternative to Palestinian dependence on labor flows to Israel in the medium and long term is the growth of Palestinian industry and the export of labor-intensive goods. This, in turn, requires open borders and free access to the outside world for Palestinian goods.

In the short term therefore, the normality of labor movements needs to be guaranteed. Labor flows have to be determined by market mechanisms and not by security measures defined unilaterally by the Israelis. Closures did not prove a viable means to counter suicide attacks, while at the same time they hindered Palestinian attempts to create any sustainable alternative to employment in Israel. If the customs union is to remain in force in the future, the free movement of labor should be an intrinsic part of it. The forces of supply and demand in Israel and in WBGS would then determine who works where. Alternatively, if closure remains a prerogative of the Israeli authorities, a certain quota of workers ought to be guaranteed access. This is in the interests of both workers and the Palestinian and Israeli economies.

7.1.2 Regulation of Labor Movements

For the past five years, the recruitment of Palestinian workers into Israel has been determined by Israeli-defined security considerations. The policy of permits, with its emphasis on security clearance, makes employment subject not to credentials but to the decision of the security services. Supposedly intended to prevent suicide bombers from entering Israel, these measures have proved inefficient. From an economic point of view, they simply increased transaction costs, bureaucracy and led to the inefficient allocation of resources. The present policy of permits favors the employment of WBGS workers in West Bank settlements rather than in Israel. Such a bias must be stopped.

In the future, the regulation of labor movements should be based on purely economic criteria, as it was before 1988. The employment offices on both sides of the Green Line should be responsible solely for matching the

supply and demand of Palestinian labor in Israel. The Palestinian Employment Service at the Ministry of Labor has a core role to play in disseminating information about the availability of jobs and workers' rights in Israel, as well as providing assistance to workers. This is the most effective means to encourage legal employment to the benefit of workers and the Palestinian economy as a whole.

The Palestinian Ministry of Labor needs to set out a clear strategy as to how the free access of labor to Israel can be guaranteed. In particular, it needs to clarify its policy towards labor contractors and agencies and how it intends to regulate their activities in the future. The Ministry should also define new means of working with local NGOs and international institutions to defend workers' rights. Moreover, it needs to formulate a clear policy towards Palestinian employment in the settlements. Even if the Ministry maintains its boycott of this employment, workers in the settlements still require protection and should be granted the same rights as those given to workers in Israel. The Ministry could work with specialized NGOs, workers' trade unions, etc on this point.

7.1.3 Deductions from Wages of Legal Workers in Israel

Substantial savings accrued from the wages of WBGS workers in Israel have not been transferred to the Palestinian economy. This is largely due to the fact that Palestinian social security institutions have not yet been established. The repayment of these funds is urgently needed, especially as they would prove a considerable contribution to the Palestinian financial system. In the meantime, the access of workers to their savings must be legally guaranteed. Therefore, a number of legal and institutional issues need to be resolved as quickly as possible.

Pension funds

It is crucial to determine the significance of pension funds accumulated from the wages of Palestinian workers in Israel in the present pension system available today in WBGS. At present, 44% of the WBGS working population are covered by some form of pension scheme, of which 75% are public sector pension schemes (MAS; Hamed et Al-Botmeh 1997). More than three-quarters of those in public sector pension schemes are

covered by pension funds.⁴⁸ Private sector establishments also run provident fund systems.⁴⁹

The draft social security law does not tackle the present structure of pension insurance in WBSGS and this law still needs further clarification and precision.⁵⁰ The law seems to suggest that basic pension insurance will be established to include all non-public sector employees and workers. This fund could eventually be supplemented by private ones, although this might not be optimal in view of the low pension coverage that exists. A MAS study (Hamed et Al-Botmeh 1997) suggests the development of multi-establishment or group funds for each sector to combine the small funds of each sector and ensure a minimum of scale efficiency.⁵¹ Given the present size of the pension sums accumulated by WBSGS workers in Israel, it is reasonable to suggest that a special pension fund be created for them. On a general basis, the legal and regulatory framework for pension funds and annuity providers needs to be developed.

Workers' social fund

The draft social security law provides insurance against work accidents. In this respect it has the same provisions as the National Insurance Institute in Israel, although the Institute provides a wider range of services. Again, it might be wise to create a separate "work accident" fund, which will also allow for the transfer of the substantial Equalization Levy presently held in Israel.

⁴⁸ The rest are covered by a pay as you go system. This means that retired workers are paid out of the PNA public wage bill and not out of a provident fund.

⁴⁹ This includes NGOs, private firms and universities. In total there are 75 private provident funds. The UNRWA covers 90% of all its workers in a pension scheme. In 1996, the assets of its provident fund were worth US \$318 million.

⁵⁰ In terms of structure, the proposed social security institute will be an independent legal institute managed by a board of directors representing the Ministries of Labor, Health and Finance, in addition to representatives from trade unions and chambers of commerce. The head of the institute is to be chosen by the President according to the recommendation of the Ministry of Labor. It is not clear what role the Palestinian Legislative Council should play in managing and controlling the activities of the institute.

⁵¹ The major reason for not opting for a mandatory national pension insurance scheme is the fear that it will be used in a non-economically optimal manner. Bearing in mind the present PNA budget deficit and the scarcity of private investment, "political pressure to use accumulated funds in a non economically optimal manner can be expected to be enormous" (MAS; Hamed et Al-Botmeh 1997, p.21).

A social fund committee

In view of the importance of workers' savings in Israel, it might be advisable for the Palestinians to establish a *specialized social fund committee* formed of representatives from the Ministry of Labor, Social Security, Central Bureau of Statistics, economic and social security experts, lawyers and other parties concerned. This committee would need to have an understanding of the Israeli social security system and what examples can be drawn from it. The advice of lawyers and economic experts is essential to decide on the optimal way to transfer workers' contributions from Israel to the Palestinian economy. The committee would also be responsible to decide whether it would be better to establish a separate fund for the contributions of workers in Israel, or to integrate these savings into the national social security system currently under proposal. The committee would also need to define initially the type of social security system to be created (a multi-establishment or a single encompassing one) and what steps are needed to integrate the various social insurance funds available. The legal dimension in these matters is vital since laws must be established that guarantee the access of workers to their savings and to quality services for which they paid while working in Israel.

7.1.4 Joint Labor Committee and a Possible Social Fund Subcommittee

The Joint Labor Committee has proved to be an important forum for the exchange of concerns and attempts to reach common solutions. However, the fact that security has taken precedence over economic issues must not continue in the future. Security ought to be discussed in the CAC per se, leaving labor issues to economic agents and parties. There are a number of pressing economic issues which the Committee is presently unable to tackle thoroughly due to lack of expertise. These issues include simplifying the recruitment of Palestinian workers in Israel, finding economic means to combat illegal employment (e.g. fiscal repercussions on employers), providing special training for workers and encouraging them to update their skills in Israel.

Moreover, it might be advisable to establish a specialized joint subcommittee to handle issues of social security. The two sides need to define clear legal procedures for determining the procedures for the transfer of pension and national insurance benefits from Israel and into the Palestinian social security institutions (who is responsible for what, what arbitrary/supervisory agency will be available to supervise the transfer of

the money, what guarantees will be provided to protect the access of workers to their savings, what role will Palestinian laws have in Israeli courts and vice versa, etc). The experience and advice of other countries with regard to social security institutions and the transfer of workers' savings can be insightful and helpful in this regard (e.g. the case of France and the Maghreb countries, Germany and Turkey, the EU). It is vital that these funds are transferred as quickly as possible to the Palestinian economy.

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