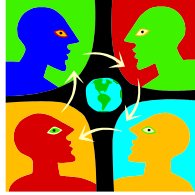


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POLICY PAPER



**Kerem Shalom as a model for organizing the international borders of the
Palestinian Authority
SEPTEMBER 2005**

Executive Summary

The Israeli disengagement from Gaza and Israel's stated intent to end its occupation and its responsibility over Gaza requires the parties to reach agreements to end the Israeli control over Gaza's international borders (not over the Gaza-Israel border). Israeli fears, enhanced by the breakdown of control and the chaos that ensued following the completion of its withdrawal from Gaza, complicated the already very complex negotiations over the operations of the international crossings conducted with the assistance of the good offices provided by the Special Envoy.

This document aims to provide some new concepts and ideas in the form of two possible models that can be immediately implemented in Kerem Shalom that will enable a process of gradual transference of authority from Israel to the Palestinian Authority regarding the clearance of goods from Egypt to Gaza. In an ideal situation, the preferred model for the Gaza-Egypt crossing would be a bi-lateral model agreed upon by Egypt and the PA, however given the objective reality and the lack of trust between Israel and the PA, there seems to be no way to avoid direct Israeli involvement.

The two models presented offer the negotiators some ways to bridge the gaps between the parties. The models are based on a process that aim to build trust between the parties while building capacity of the Palestinian Authority to manage their side of the border, while maintaining the common customs envelope that both sides and the international community have expressed an interest in continuing. It is our belief that the successful operation of the border will be able to serve as a model regarding the more complex situation that will exist in the Gaza seaport, once opened, and regarding the future operation of the Gaza International Airport. It seems that the most feasible model is based on a gradual and planned transference of responsibilities from Israel to the PA with third party monitoring, verification and enforcement capacities in place.

General

On 11-15 September 2005, IPCRI and the Konrad Adenauer Foundation convened a meeting of their Israeli-Palestinian Economic Working Group. The meeting was held at the Konrad Adenauer Villa Collina in Cadenabbia, Italy. The main topic for discussion, held days after the completion of the Israeli withdrawal from Gaza, was the centrality of the economic sphere of relations between Palestine and Israel, and within that, the great importance of determining the model of operations of the international border between Gaza and Egypt.

In this paper we will present some of the thinking of the IPCRI team on this issue based on the inputs of the Israeli and Palestinian participants in the working group, representing officials from both sides and private sectors leaders. As known, this subject has not been completely resolved in the negotiations being held between the two sides with the assistance of the team of the Special Envoy Mr. James Wolfensohn. Our reward will be if this document can provoke some new ideas and thinking that will enrich the discussions and the possibilities for arriving at an agreed negotiated resolution.

Background

The disengagement process of Israel from the Gaza Strip and the northern West Bank has been completed, however, several unresolved issues have been left that demand solutions. The events of the days since the completion of the disengagement and especially the renewal of violence emanating primarily after the Hamas parade in Jabalya and the intensive exchange of fire that followed have demonstrated the concrete acute problem in the Israeli-Palestinian relationship, the need to calm the arena as a first step towards achieving stability that both sides need: Israel, in order to produce the economic and political dividend of implementing the painful disengagement and to digest the social and political ramifications, and the Palestinians, in order to enjoy the entirety of the new situation in which for the first time since 1967 the Israeli presence in Gaza has ended, and not less importantly, the possibility of returning to bilateral negotiations with Israel in order to advance the political process regarding the rest of the territories occupied by Israel.

The lack of trust between the parties led to the tabling of a proposal that during an interim period, a passage way for cargo would be established at the triangle meeting point of Egypt, Gaza and Israel. The negotiations on this proposal have been complicated by large gaps in the positions of the parties regarding the extent of Israeli control. The mutual desire of the parties and of the international community to preserve the common customs envelope requires full agreement between the parties on the operation of the border and on the clearance of goods entering Gaza. The demands regarding the clearance of goods include security checks, customs, VAT, and standards checks and phyto-sanitary and veterinary controls for fresh produce and livestock. In light of the Israeli demands, the

international community proposed the involvement of an international private company to take over the clearance functions from Israel; however, none of the proposed international companies were acceptable to Israel.

Given the possibility of security quietness, the main challenge to achieving stability in the Palestinian society is the advancement of the Palestinian economy. It is no secret that the Palestinian economic reality, especially in Gaza is extremely desperate. Despite the continuous efforts of the international community to create change, the state of the Palestinian economy is quite dismal. In the decision of the Government of Israel to phase out all Palestinian labor in Israel by 2008, the State of Israel has signaled that it intends to remove all of its responsibility regarding the future of the Palestinian economy. But all of this is only theoretical because there is little doubt that the model of a “one-side divorce” has no sustainability – it might be that the Palestinian economy needs to be, and will be, less dependent on the economy of Israel, however the geographic proximity of the two economies, trade patterns of the past, the difficulties that the Palestinians will face in opening new markets, international pressure and the security implications of an economic disaster in Palestine will not permit Israel to ignore its “poor neighbor” and therefore will continue to be involved in shaping the economic future of Palestine.

Through Israeli assistance or by relying on the international community, the Palestinian Authority is obliged to take some concrete steps in the economic sphere. In the difficult reality of the Palestinian national economy, certainly facing wide ranging accusations of corruption in the public sector, the importance of developing the private sector is supreme. It seems that widening the possibilities for private sector initiatives can bypass some of the obstacles existing in the establishment based economy and thereby significantly advancing the rate of growth of the Palestinian economy for the benefit of the whole population. The need to advance the Palestinian private sector places onus and responsibility on Israel: the need to make significant policy changes that will allow for much great freedom of movement for people and goods, both within the Palestinian territories and between the Palestinian territories of the West Bank and Gaza and between the Palestinian territories and the rest of the world. With all of the difficulties involved, and mainly the security considerations, it is essential for Israel to identify the “dividend” to be gained mainly from the strengthening of internal Palestinian stability and the calm between the two parties and as a result to take the calculated risks in changing policies in the field.

Concretely, this document relates to the international crossings between Gaza and Egypt. The events immediately following the Israeli departure from Gaza, mainly the free movement following the forced uncontrolled opening of the border, demonstrated the urgent need to arrive to quick agreements on these issues. This “interdisciplinary” matter has far reaching political and security ramifications and implications as well as direct impact on economic developments.

The correct design of operations for the Kerem Shalom crossing may serve the direct interests of both sides in the outlook for the future: the success of the Kerem Shalom model can strengthen trust in the ability and the responsibility of the Palestinian Authority, increasing overall trust between Israel and the PA and support the development of confidence and trust in the overall relations between the parties.

Goals of this document

The main purpose of this document is to propose a solution for the operation of the international border between Gaza and Egypt for an interim period, mainly through the perspective that the model adopted can assist the sides towards the eventual full opening and operations of the Rafah crossing, moreover towards the opening and operation of the Gaza seaport and possibility the Gaza International airport as well.

Main Assumptions

- Any agreement regarding the operations of the Palestinian international crossings and within that the Gaza – Egypt crossings, full agreements must be reached by the parties involved.
- The free movement of people and goods between Gaza and Egypt is essential to the development of the Palestinian economy. Moreover, the free movement of people and goods has overriding national-symbolic importance in terms of asserting sovereignty and independence. It is also vital in terms of the real situation of the residents of Gaza – releasing “claustrophobic” pressure of the population which has not been able to leave Gaza for many years. Therefore, Israel has a direct interest to advance solutions rapidly even if there are calculated risks involved.
- The chaos and loss of control immediately following the Israeli withdrawal was temporary and has stopped with the organization of the Palestinian and Egyptian security forces on both sides of the border. There remains, however; the potential for chaos to re-emerge which would have critical implications on the entire Israeli-Palestinian relationship.
- Following stabilization in the coming days or weeks, there is an urgent need to reopen the international crossing between Gaza and Egypt. The rapid need for this requires reaching agreements quickly. The agreements reached, however, may be gradual in nature both regarding the physical location of the crossings and regarding the operations of the crossings. It is also wise to distinguish between the movement of people and the movement of goods as well as between movement into Gaza and movement out of Gaza.

- Even if it is agreed to allow for the partial opening of the Rafah crossing, it seems unlikely that Israel will agree to allow for goods to enter Rafah into Gaza for the time to come. This is for three main reasons: (1) the Israeli fear of weapons and ammunition from being smuggled into Gaza; (2) fear of the lack of capacity of the Palestinians to fully implement the customs regulations agreed to by the parties within the common customs envelope – including the fear that any customs official can be “bought”; and (3) the need to strict veterinary and phyto-sanitary controls on agriculture produce and livestock entering Gaza – all of this despite the realization that the scope of trade will probably be low of goods entering Gaza from Egypt.
- Accordingly, Israel will most probably demand that until there is a solution which lays its fears to rest regarding goods entering from Egypt to Gaza, these activities will be conducted through the Israeli controlled Kerem Shalom crossing. This arrangement is supposed to last for six months according to the Egyptian and Palestinian proposal. It can be expected that with agreement between the parties, this arrangement will be extended beyond the six-month period, based on lessons learned during this period and an agreed upon time-table for the full operation of the Rafah crossing in the future.
- There is, in principle, agreement between the parties regarding possible third-party involvement at Kerem Shalom. There is great importance in the role of the third party – this is a great asset for the process that should be maximalized for the mutual benefit of the parties.
- As far as we know, there is still no full agreement between the parties on the nature of the Israeli presence at the crossing: is it possible for there to be a “mediated” presence, as a side participating in the checking, or can Israel agree to an indirect presence, some form of off-site monitoring through electronic means? As the issues are still under deliberations we have taken the liberty to explore some more flexible concepts and ideas.

The main idea

Constructing a trilateral (Palestinian-Israeli-third party) agreed upon model for the operation of a temporary international crossing in Kerem Shalom with the vision that the success of that model will enable, with agreement of the parties, to make use of it in the opening of the Rafah crossing for incoming goods to Gaza with the view that in the future the model could be adopted in the Gaza seaport and for the Gaza International airport, once agreement is reached on its opening.

The proposed model

- Opening, as soon as possible, the Rafah crossing for people in both directions as well as for the exit of goods from Gaza to Egypt. It is vital that this matter be agreed upon as soon as possible in order to strengthen the image of the Palestinian Authority in the eyes of the Palestinian public months prior to the Palestinian elections to be held in January 2006. It is understood that Israel has expressed reservations regarding non-PA identity card holders from entering freely through the Rafah crossing. This is a point to be negotiated on whereby one possibility might be for Israel to submit a list of persona non-grata to third party monitors at the Rafah crossing who would have the authority to prevent entry of those people, referring them to the crossing at Kerem Shalom.
- Placing the Kerem Shalom crossing near the triangle of Egypt, Gaza, and Israel but on the physical crossing of Israel and Egypt. The intention is that goods entering from Egypt will not physically enter Israeli territory beyond the crossing point as this would impinge upon the concept of a bilateral Egyptian-Palestinian international border and would continue to idea of continued Israeli occupation in the eyes of the Palestinians and will complicate the process on the ground. The goods going through the Israeli controlled crossing with be checked and then sent directly into Gaza. This would be valid for the agreed period that the Kerem Shalom crossing would be operational.

The crossing process would work in one of two options presented below:

The preferred option (although perceived at this point to be less viable):
A third party international commercial company would take over the duties and responsibilities for the clearance of goods going into Gaza. This would take place either in Kerem Shalom at first, and later, in Rafah. Israel and the Palestinians would take on monitoring roles of the work of the private company. The clearances would include checks for security, border police and control, customs, VAT, veterinary and phyto-sanitary. The Egyptians would carry out their own checks and procedures on their side of the border, while on the Palestinian side of the border, the third party commercial company would conduct the clearances. The Israeli and Palestinian role, under this scenario, would be to monitor procedures undertaken by the third party. Israel, would gave the right to prevent suspicious cargo from gaining clearance until some kind of recourse mechanism would clear the cargo or send it back. For that purpose, there must be a bonded warehouse facility built at the crossing.

It is recommended that the third party be a private international commercial company that can provide professional expertise in its ability to provide

answers for Israel's main concerns. It is desirable that this company be under the direct responsibility of a third state or international body (such as NATO or the EU), it is possible that instead of a private company, the mission could be implemented by an international security related body which would be composed exclusively for this purpose through an international tender and funded by the international community and would be obligated to the international community by contract and by agreement.

Under this scenario, Israel would have to voluntarily agree to concede that it will not be conducting the various checks that will be conducted by the international company. Initially Israel's physical presence would be in a monitoring capacity and even that could be phased out later through the adoption of a "remote control" electronic means model. In that model, it would be agreed that Israel has to right to demand that suspicious shipments be stopped from entering Gaza until the shipment could be checked and verified that the goods in question are not outside of the allowed items.

The second alternative (and more feasible one)

In the event that the above model is not possible (for reasons that there is no acceptable third party capable of doing the task) it is recommended that the border operation be designed in three distinct stages. All of these phases should be detailed in their planning, set to a time table and their implementation monitored by the Quartet.

Stage 1: The crossing for people and goods leaving Gaza to Egypt can be carried out at Rafah through Palestinian-Egyptian agreements as soon as Rafah is prepared to be re-opened. Regarding goods entering Gaza from Egypt, during the first stage all such goods will enter Gaza via Kerem Shalom. During this stage, Israel will conduct all of the clearances - customs, VAT, security, phyto-sanitary and veterinary controls. During this phase, the Palestinians will construct and develop their own parallel bodies to the Israeli ones. The Palestinian clearance bodies will work alongside of the Israelis without having any direct authority at this point. This will be a period of learning, capacity building, and trust development. A third party professional monitoring body will be in place to ensure fair treatment by Israel and the use of acceptable and predictable international standards by Israel.

Stage 2: At Kerem Shalom, the Palestinians will take over the functions undertaken by Israel during stage one. Some of the functions can be taken over by the Palestinians gradually as they develop their capacity even before formally entering stage two – such as phyto-sanitary or veterinary services. The Israelis would remain in Kerem Shalom during this stage; however, they would play the role of monitors while the Palestinians would be carrying out the actual clearances. Israel would retain enforcement capacity during this

stage in its ability and capacity to prevent the entering of goods that are outside of the agreements. The third-party will also remain at Kerem Shalom during this stage to monitor the process as well and to resolve disputes that might emerge.

Stage 3: During this stage, the international crossing will move to Rafah where movement of goods will take place in both directions under full Palestinian authority. The third party will move to Rafah and will monitor the work of the Palestinians and will retain enforcement capacity in its ability to prevent the entry of non-allowable goods.

Throughout the implementation of these three stages, electronic surveillance and monitoring mechanisms will be established that will allow Israel the ability to monitor the movement of goods and people by “remote control”. Disputes regarding the movement of peoples and goods will be resolved with the assistance of the third party. Bonded facilities will be established at the crossings where any goods in dispute can be placed and held until the dispute has been resolved.

The main aspects and benefits of this model are:

1. Initial Israeli control while Palestinians are being trained and capacity is being built to take over full responsibility. The customs envelope is maintained and a system to rebuild Israeli-Palestinian trust is incorporated as a central part of the modus operandi.
2. Palestinians gradually take over full control while in the interim Israel remains in place to monitor and to verify the full functioning of the Palestinian systems.
3. Third party monitors are in place throughout the process to monitor, verify, enforce –when necessary, to resolve disputes.
4. This is a scenario which creates Palestinian capacity, limits the role of the third party (rather than having the third party do the work) and builds systems of trust and confidence between Israel and the Palestinian Authority.

In order for this model to work, the time table must be agreed to from the outset for each stage of the process. The third party monitors must be professional, respected and empowered to enforce in the absence of Israel in stage three. This model ensures to the Palestinians that the continued Israeli control will be limited to a time frame and to the place of Kerem Shalom. Once the move is made to Rafah, the Palestinians will have full control of the international border. This model will create the possibility for the Palestinians to have control at the Gaza seaport. as well with the built-in experience of the third-party monitoring, verification and enforcement capacities.