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CARIM Analytic and Synthetic Notes 2010/09

Highly-Skilled Migration Series
Legal Module



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Consortium for Applied Research on International Migration

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The Case of the Palestinian Authority

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This publication is part of a series of papers on Highly-Skilled Migration written in the framework of the CARIM project and presented at a meeting organised in Florence: ‘Highly-Skilled Migration into, through and from Southern and Eastern Mediterranean and Sub-Saharan Africa’ (30 November – 1 December 2009).

These papers will be discussed in two other meetings between Policy Makers and Experts on the same topic in early spring 2010. The results of these discussions will also be published.

The entire set of papers on Highly-Skilled Migration are available at <http://www.carim.org/HighlySkilledMigration>.

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The Consortium for Applied Research on International Migration (CARIM) was created at the European University Institute (EUI, Florence), in February 2004 and co-financed by the European Commission, DG AidCo, currently under the Thematic programme for the cooperation with third countries in the areas of migration and asylum.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and forecast migration in Southern & Eastern Mediterranean and Sub-Saharan Countries (hereafter Region).

CARIM is composed of a coordinating unit established at the Robert Schuman Centre for Advanced Studies (RSCAS) of the European University Institute (EUI, Florence), and a network of scientific correspondents based in the 17 countries observed by CARIM: Algeria, Chad, Egypt, Israel, Jordan, Lebanon, Libya, Mali, Mauritania, Morocco, Niger, Palestine, Senegal, Sudan, Syria, Tunisia, and Turkey.

All are studied as origin, transit and immigration countries. External experts from the European Union and countries of the Region also contribute to CARIM activities.

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Abstract

Since its establishment, in 1994, the Palestinian Authority has encouraged the 'return' of Palestinians to the West Bank and Gaza Strip. It has also enacted an investment promotion law in order to attract foreign capital. These two policies are motivated by the assumption that human and financial capital are both necessary for building Palestinian institutions, and preparing for statehood. Fifteen years later, the results though are slight. The few who have returned have had little impact, while many others, mostly highly-skilled, have emigrated.

The Palestinian Authority law does not define highly-skilled migration. The lack of laws related to issues of migration is largely due to the PA's lack of jurisdiction. Exit and entry of residents and foreign nationals from and to the occupied Palestinian territories, including those under Palestinian Authority control are still regulated and administered by Israel. This lack of regulation has long been accompanied by a lack of policies to deal with a phenomenon (namely the emigration of highly-skilled Palestinians), that is rightly considered dangerous for the Palestinian cause and for Palestinian unity generally; most importantly, it also has negative consequences on Palestinian society and economy (thus, hindering state-building efforts).

Attracting highly-skilled immigrants and limiting the damage from the emigration of highly-skilled Palestinians cannot be managed by legal regulation alone. A decision of a highly-skilled individual to migrate is not only an economic decision. Political and security factors, coupled with the long Israeli occupation, have also decided the direction of highly-skilled migration flows.

Résumé

Depuis sa mise en place en 1994, l'Autorité palestinienne a encouragé le « retour » des Palestiniens en Cisjordanie et dans la bande de Gaza. Elle a également adopté une loi de promotion des investissements visant à attirer le capital étranger. Ces deux politiques sont basées sur l'idée selon laquelle le capital tant humain que financier est nécessaire à l'établissement des institutions palestiniennes et à l'émergence de l'Etat. Quinze ans plus tard, les résultats sont minces. Les quelques retours ont eu peu d'impact, tandis que beaucoup d'autres Palestiniens, pour la plupart hautement qualifiés, ont émigré.

La législation de l'Autorité palestinienne ne définit pas la migration hautement qualifiée. Le manque de lois régissant les questions migratoires est largement dû au manque de compétence. La sortie des résidents et des étrangers des territoires occupés, y compris de ceux sous contrôle de l'Autorité palestinienne, ainsi que le retour, sont toujours régis et administrés par Israël. Le manque de régulation a longtemps été accompagné d'un manque de politiques pour gérer un phénomène (l'émigration des Palestiniens hautement qualifiés) considéré à juste titre comme dangereux pour la cause palestinienne et plus généralement pour l'unité palestinienne ; ce phénomène a avant tout des conséquences négatives sur la société et l'économie palestiniennes (et donc sur les efforts de construction étatique).

L'objectif d'attirer les immigrés hautement qualifiés et de limiter les dommages causés par l'émigration hautement qualifiée ne peut être atteint par la seule législation. Pour un individu hautement qualifié, la décision de partir n'est pas seulement une décision économique. Les facteurs politiques et sécuritaires, liés à la longue occupation israélienne, ont également orienté les flux de migration hautement qualifiée.

I. Introduction

This paper will discuss ‘highly-skilled migration’ (*hereinafter* HSM) to and from the occupied Palestinian territory. Despite the importance of the migratory movement of Palestinians of the Diaspora from the countries of their habitual residence (with the exclusion of the West Bank and Gaza Strip) to third states (again, with the exclusion of the West Bank and Gaza Strip) and back again, this paper will limit itself to those Palestinian Authority’s (*hereinafter* PA) laws and policies that are related to HSM.

This paper is largely descriptive, in that it will not presuppose an ideal model against which the PA’s performance should be tested, or to which it should aspire when dealing with issues of migration. It is also analytical in that it will build a theoretical construction out of existing laws and policies, regulating the HSM, or the absence of said laws. Available empirical data, largely based on secondary sources, will be exclusively used for the support of the arguments I intend to make. In contrast to its theoretical character and in order to meet the expectations and needs of the targeted groups of this report, I will include, in the conclusion, some prescriptive statements for policy makers.

Although it may seem to be biased towards certain options, this report does not include open-ended arguments; rather it provides insights aimed at encouraging policy makers to explore new options. The arguments advanced will prepare for the main statement, largely normative, that I defend in the conclusion, namely that the PA should take note of the needs of its population and that there is a need that it acts accordingly. Ignoring or avoiding dealing with issues related to migration in general, and HSM in particular, is not a solution. It is part of the problem.

The actions that the PA can undertake include, but are not limited to, regulations codified in legislative texts. Most importantly, the PA needs to adopt policies, based on knowledge of the issues at stake, rather than their consequences. The aim of these policies is to plan the departure of skilled Palestinians, and the accommodation of skilled immigrants, the anticipation of and the preparation for their possible movement, and the foreseeing of the possible impact of HSM on the Palestinian economy, on Palestinian society as a whole, and on national interests in building a state in the West Bank and the Gaza Strip.

I will first assess the legal framework related to HSM in the territories under PA control. I will show how the absence of definition and legal regulation is related to the anomalous jurisdiction of the PA, which exercises its authority in the so-called ‘autonomous territories’, thus coexisting with the Israeli occupation. I will insist on the need to consider issues of migration (to and from the occupied Palestinian territory) in a larger context that goes beyond economic factors (section II). The transnational dimension of migration is particularly relevant for Palestinians, who are for the most part abroad (the Diaspora) rather than at the West Bank and Gaza Strip (section III).

The second part of the paper concerns policies aiming at attracting skilled migrants, the facilitation, the coordination, or the hindrance, of the departure of skilled Palestinians. There are indicators that the PA encourages the Palestinians of the Diaspora to make their ‘return’ to the West Bank and Gaza Strip (section IV),¹ while, at the same time, it shows reticence in dealing with the ‘phenomenon’ or the ‘problem’ of emigration of skilled Palestinians (section V). However, there are some signals that this

¹ The word ‘return’ and ‘returnees’ is often used to describe the migration of Palestinians of the Diaspora into the territories under PA control, carried out since Oslo, in agreement with Israel. The interesting thing about these terms is that they imply ‘return’ even if many of these Palestinians have never been in the West Bank and Gaza Strip before, and even if they, or their ancestors, were supposedly to return to the (1948) territories that are now part of the state of Israel. For this reason, I use inverted commas when talking about ‘return’ and ‘returnees’, in order to make a clear distinction between the right of return, and the ‘return’ to the territories under PA control.

is no longer the case. This revival should be encouraged, without being given a weight that it does not or cannot pretend to have (section VI).

Finally I will be interested in initiatives for connecting skilled Palestinians of the Diaspora with the West Bank and Gaza Strip. These initiatives are not carried out only on the official / PA level; they are often initiatives undertaken by the civil society itself, whether by universities, aiming at coordinating, making agreements, and encouraging coordination with foreign institutions (Section VII), or by other organizations and programs, often with the support of the international community or UN agencies, particularly the UNDP (section VIII). I will conclude with some remarks and evaluations of the existing legal framework and policies, suggesting that HSM should be looked at more carefully and expressly, and that not only the consequences but also the roots of this phenomenon should be dealt with (Section IX).

II. Definition of ‘highly-skilled migration’

While ‘immigrant’ by definition refers to a non-national,² in the context of the occupied Palestinian territory, the difference between a national and a foreign national is often blurred. Many Palestinians are *de facto* denied access to the territories under PA control and have been denied an ID number (still under Israeli control as part of the population registry). In fact, often immigrants are simply Palestinians who are denied an ID number. Many of them may have accessed the occupied Palestinian territory with a visa, and overstayed. For Israel, these subjects are illegally residing in the occupied Palestinian territory, despite, or maybe regardless of, being ‘Palestinian nationals’. Many of them do not have any other travel document or permit or visa to reside legally in other countries. Those Palestinians, who do not have an ID card, are, for Israel, legally inexistent; if they are arrested by Israeli soldiers, they risk deportation. If they leave the country, they are not able to return. This is a major obstacle towards their free movement within the territories under the PA control, and, hence, their productivity.

Accordingly, it may be asserted that, in the case of most Palestinians, the factors that determine their decision to emigrate from, to return or not to return to, their home country is largely affected by political and security considerations and not only by economic factors.³ Besides, many Palestinians have their habitual residence in a foreign country, due to their being, for decades, refugees abroad. Legal instability and economic fragility, coupled with refugeehood and statelessness form a push factor for many refugees to migrate (while access to territories under PA control is not an option, due to Israeli restrictions) (Khalil 2009b).

Arab states (mainly the oil-producing Gulf States) have been home to large flows of skilled and professional labour migrants (Hilal 2007, 1, 3; Rosenfeld 2002, 520). Other highly-skilled Palestinians, however, have tended to emigrate to the Americas and Western Europe (Farsoun 2005, 238). Some Palestinian refugees have obtained citizenship in a host country. Jordan for example is an exporter of skilled labour (mainly of Palestinian origin) to oil-producing Gulf countries (Hilal 2007, 29). Accordingly, the migration of highly-skilled Jordanian citizens (of Palestinian origin) may constitute a matter of interest for both the Palestinian and Jordanian authorities and necessitate coordination.

PA law does not define HSM or even migration in general.⁴ The only legal provision dealing with ‘foreigners’ as a category of persons that are distinguished for the purposes of the law appears in the

² Reference in this paper is exclusively to international migration, not internal migration.

³ For this reason, it is suggested (for example, see: Hanafi 2008, 98) that the issue of the emigration of highly-skilled Palestinians be seen in the light of Palestinian refugees’ many exoduses, since 1948.

⁴ For more about reasons why many issues related to migration are still unregulated, cf. Khalil (2006; 2007).

Palestine Labour Law No.7 of 2000.⁵ According to article 14 of Labour Law a foreign national, willing to work legally in the territories under PA control, needs to obtain first a work permit, issued by the PA Ministry of Labour. The Council of Ministers Decision No.45 of 2004 (article 2) determines the conditions for granting the permit, which are, *inter alia*, non-concurrence with the local labour force, the real need of his or her work, and reciprocity of treatment. The same article grants the permit on the basis of the suitability of the skills and professional experience of the foreign national requesting the permit and the occupation he or she is able to fulfill. It should be noted, however, that the Labour Law does not condition the granting of a work permit for foreign nationals with a legal title of stay in the territories under PA control. This situation is largely related to the jurisdictional anomaly of the PA itself, since the title of stay (visa or permit) is not granted by the PA, but rather by the Israeli occupation authorities (Khalil 2008b, 8-9).⁶

III. Bilateral and Multilateral Agreements

Since only one third of the Palestinian population resides in the West Bank and the Gaza Strip, the majority of Palestinians are expatriates. Most of those Palestinians are refugees, especially in neighboring Arab countries. Others may have migrated voluntarily but are unable to return to the West Bank and the Gaza Strip. This means that, for the Palestinians, the bilateral as much as the regional dimension needs to be taken into account when dealing with HSM.

The Palestinian Liberation Organization (*hereinafter* PLO) and the PA concluded several bilateral agreements with foreign governments and international organizations, such as the EU-PLO Interim Association Agreement (1997).⁷ However, most of these are trade agreements⁸ that have no relevance for HSM.⁹ Accordingly, for the Palestinians, an important forum for dealing with HSM is the League of Arab States (*hereinafter* “Arab League”), of which ‘Palestine’ is an active member. The Arab League has recently undertaken several different initiatives relating to migration.

HSM is often referred to, by the Arab League, as the ‘migration of brains’ or ‘brain drain’. The Arab Declaration on International Migration can be cited as an example.¹⁰ In this declaration the Arab league recognized the negative impact of HSM on development efforts and its negative effect on the achievement of Millennium Development Goals in developing countries, particularly the impact of the migration of workers in vital sectors such as health, education and research and development. The

⁵ There are other references to foreign nationals in different PA laws, such as in the case of the Law on Civil and Commercial Procedures No. 2 of 2001, related to determining cases of the jurisdiction of Palestinian courts over foreign nationals, or in the Law on Charitable and Non-Governmental Organizations No. 1 of 2000, which determines the conditions in which foreign nationals can be part of these associations or in which foreign associations can open a branch in the territories under PA control (for more, see: Khalil 2006). However, for the purposes of formulating incentives for foreign nationals to establish themselves in the territories under PA control, and the legal constraints for their stay, there are few references.

⁶ For more, see section V.

⁷ The “Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part” Official Journal L 187 , 16/07/1997 P. 0003 – 0135. [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21997A0716\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21997A0716(01):EN:HTML)

⁸ The Palestine Trade Center documents trade arrangements with the United States of America, Canada, the European Union (EU), the European Free Trade Association (EFTA), Russia, Egypt, Jordan, Saudi Arabia, Israel, Turkey and GAFTA. Cf. <http://www.paltrade.org/en/about-palestine/trade-agreements.php> .

⁹ To the best of my knowledge, there is no similar agreement related to arranging or organizing the departure of skilled Palestinians to work in host countries. Emigration is often based on individual initiatives, often making use of unofficial networks, such as family or relatives, or members of the same local community (Lubbard 2008, 3) who are already in host country.

¹⁰ Resolution 1664- G.A 78- 4/9/2006, adopted by the League of Arab States, Social-Economic Council in its general assembly (78) in 2006 at ministerial level. Available at: http://www.poplas.org/upload/mig_dec_en.pdf

declaration called on Arab States to adopt necessary procedures and measures to benefit national competencies to ensure their stability and prevent possible brain drain. The declaration calls for reinforcing relationship networks with migrant competencies and their institutions, engaging them in development efforts and in transferring and resettling knowledge.

In order to carry out this declaration, The Arab Observatory for International Migration¹¹ was launched by the Population Policies and Migration Department of the League of Arab States.¹² Many activities were undertaken in this framework, largely limited to enhancing knowledge¹³ and the exchange of data.¹⁴ The available information suggests that the number of highly-skilled migrants doubled during the last decade (between 1990 and 2000) all over the world. According to data collected by the Population Policies and Migration Department of the League of Arab States, this was also the case for skilled Arab migrants,¹⁵ with some professional sectors being affected more than others.¹⁶

IV. An Increasing Palestinian Interest

A Palestinian Expatriates Affairs Department (*hereinafter* PEAD) was established only in 2007 by PLO Executive Committee Chairman, Mahmoud Abbas.¹⁷ The PEAD is responsible for establishing contact with Palestinian communities in the Diaspora.¹⁸ The PEAD participated in Meetings related to Migrants and Expatriates by the Arab League, where Palestine is an active member.

It should be noted, however, that the PEAD is not the only Palestinian institution interested in keeping up links with expatriates. PEAD, in fact, coordinates with the PLO Department of Refugees Affairs, the PLO Department of Political Affairs, and the PA Ministry of Foreign Affairs so as to safeguard the right of return for Palestinian expatriates, and, more generally, to ensure their protection.¹⁹

Finally, it should be noted that the PA is playing an increasingly central role in coordinating with host countries and in advocating respect for Palestinian migrant rights in Arab host states.²⁰ Most importantly, The PA, as the only Palestinian entity exercising direct jurisdiction over (parts) of the Palestinian people and land, revived the West Bank and Gaza Strip, which plays the role of ‘center’

¹¹ Interesting data is available on the Website of the Observatory: <http://www.poplas.org/migration/index.asp>

¹² http://www.un.org/esa/population/meetings/seventhcoord2008/P12_LAS.pdf

¹³ This is done through the organization of conferences, workshops and other kinds of meetings, such as the Coordination Meeting on Fostering More Opportunities for Legal Migration in Cairo, Egypt, from 8 to 9 October 2008, held in collaboration with the International Organization for Migration (IOM), the Arab Ministerial Meeting for Migration and Expatriates in Cairo, Egypt, from 17 to 18 February 2008, organized by the League of Arab States, a conference held in Sharm El-Sheikh, Egypt, from 21 to 22 October 2008, in collaboration with the Office of the United Nations High Commissioner for Refugees. For more, http://www.un.org/esa/population/meetings/seventhcoord2008/P12_LAS.pdf

¹⁴ The Population Policies and Migration Department of the League of Arab States published a report in 2008, which is available in Arabic at: http://www.poplas.org/upload/migration_2008_ar_1.pdf; for a summary of the findings in English, http://www.poplas.org/upload/migration_2008_en.pdf

¹⁵ See the summary of the report, available at: http://www.poplas.org/upload/migration_2008_en.pdf

¹⁶ According to the above-mentioned report, the Arab world suffers “Brain drain in the Health Sector”, noticing that “[t]he percentage of migration of doctors born in Arab countries is higher than the total percentage of skilled migrants[.]”

¹⁷ For more, see the official website of PEAD: <http://www.pead.ps/>

¹⁸ With the exception of Jordan, Syria and Lebanon, where UNRWA is present and where the issue of Palestinian refugees is followed by another PLO department of Refugees Affairs.

¹⁹ For more about the mandate of the PEAD, see: <http://www.pead.ps/page.php?do=show&action=ta3>

²⁰ In September 2009, for example, three bilateral agreements were signed between the Cuban and Palestinian authorities aiming at boosting their cooperation in higher education, culture and sports. The agreement on higher education included clauses on how to boost the two countries’ work in developing science and education in favor of both peoples’ welfare. The news was reported by: http://news.xinhuanet.com/english/2009-09/27/content_12115780.htm

with regards to Palestinian expatriates, and, indeed, the Palestinian people as a whole. It is now around that authority (the PA), that land (the occupied Palestinian territory), and that people (the Palestinians of the West Bank and Gaza Strip), and not the PLO, the host countries, and the Diaspora, that laws and policies, affecting the Palestinian people as a whole are debated, decided and applied.²¹

V. Incentives targeting skilled immigrants²²

The PA, since its establishment in 1994, has encouraged Palestinians of the Diaspora to return to the West Bank and the Gaza Strip, to invest in its economy and to contribute to building national institutions. Most importantly, hundreds of thousands of Palestinians did return to the occupied Palestinian territory thanks to the Oslo agreements. In fact, the numbers, the names, and the modalities of this return, were rigorously scrutinized, debated and negotiated with, and finally approved by, Israel. The attitude of the PA towards the ‘return’ of Palestinians of the Diaspora may have a national dimension. However, their return was also perceived as being necessary for building a Palestinian economy and for establishing the new PA bureaucracy; while, both (viable economy and viable institutions) are deemed necessary for the establishment of the state.

In its earliest years, the PA adopted an “Investment Promotion Law” (Law no.1 of 1998, replacing Law no.6 of 1995) aimed at attracting or encouraging foreign nationals to establish businesses in Palestine. As its title suggests, this law is related to investment (the attraction of capital) and does not necessarily target particular kinds of migrants. Most importantly the law targets any investor, whether foreign or not; the law also does not distinguish between foreign nationals and Palestinians of the Diaspora.²³

In both cases (attracting foreign nationals or encouraging Palestinians of the Diaspora to ‘return’), however, the final word remains with Israel. Since 1967, Israel has maintained full control over borders and the Palestinian population registry (Khalil 2008a; Khalil 2008b).²⁴ Issues related to the exit of residents and foreign nationals from or to the territories under PA control, and their re-entry, are still under direct Israeli control. Accordingly, a foreign national (for Israel, this term refers to any non-ID holder, while Israel itself determines who can be granted an ID-number) wanting to access the territories under PA control needs a visa or permit; any visa needs to be renewed every three months and does not grant any right to work in Israel or in the territories under PA control (Khalil 2008b).²⁵

²¹ The centrality of the PA and PA institutions with regards to Palestinian ‘expatriates’ explain the earlier interest of the Palestinian Legislative Council in the issue. According to the Palestinian Legislative Council By-Law of 2000 (art. 48), a permanent committee is established (Refugees Committee) which is responsible for following up issues related to expatriates, as much as to refugees and internally-displaced Palestinians.

²² Given the difficulty of determining who is a Palestinian national for the purposes of the PA laws, the distinction between incentives for attracting Palestinians of the Diaspora to the territories under PA control, and other incentives targeting foreign nationals in general needs always to be kept in mind.

²³ The reference here is to all those Palestinian nationals who do not have an ID card and are, thus, *de facto* denied access to the occupied Palestinian territory, unless provided with a visa or permit by the Israeli occupation authority. For more, see Section II.

²⁴ The way Rafah was regulated and administered following the Israeli withdrawal in 2005 did not change, until a deal was reached between the Israelis and the Palestinians (Agreement on Movement and Access and the Agreed Principles for the Rafah Crossing). This agreement was later on suspended following Hamas’ taking control of PA institutions in 2007, and the retreat of the European Union Border Assistance Mission Rafah (EU BAM Rafah). Since then, the Gaza Strip has been under siege. For more, cf. Khalil (2009a, 271-272).

²⁵ In recent years, Israel has started to apply restrictive measures on foreign nationals wanting to enter territories under PA control. Many of those denied access to territories under PA control are of Palestinian origin, others are married to Palestinians. Many others work in international NGOs and Palestinian institutions, such as in Palestinian universities or are working with PA institutions such as the PA Ministry of Planning. A campaign was organized in order to urge the international community to intervene in this matter. For more about the Campaign for the Right to Enter the Occupied Palestinian Territory, cf. <http://www.righttoenter.ps/>

This goes a long way to explaining why PA laws avoid defining who is a Palestinian for the purposes of the law, and always make reference to ‘Palestinian’, not to ID card holders, or to those legally residing in the West Bank and Gaza Strip. This means that the law applicable to the Palestinians of the Diaspora who ‘return’ to the territories under PA control, even if they are not ID holders, is not the law for foreign nationals but the law for nationals (Khalil 2008a). Those Palestinians migrating to the West Bank and the Gaza Strip are not dealt with as immigrants, but as ‘returnees’.

VI. Incentives targeting Palestinians emigrants

The establishment of the PA and the prospects of peace, as much as the agreement aimed at permitting the return of hundreds of thousands of Palestinians of the Diaspora, made the West Bank and Gaza Strip attractive for skilled migration. This phenomenon was, however, short-lived, and both Palestinian regions went back to exporting skilled labour after the onset of the second *Intifada* at the end of September 2000 (Hilal 2007, 3).²⁶

Some reports suggested that, two years after the *Intifada* had begun, the number of those who had left the West Bank had reached 100,000; these migrants were young, well-educated persons employed by the private sector, and PA employees who resigned their positions and left the territory (Sletten and Pedersen 2003, 31). Other reports bear witness to an increase in the number of visa or migration requests from Western Embassies and emigration offices between 2000 and 2001 (Bocco *et al* 2001, 36).²⁷ In 2006 some 10,000 requests had been accepted, mostly from Palestinians having university degrees.²⁸ A survey, carried out in 2006, showed that almost one Palestinian in three is seriously thinking about emigrating.²⁹

The emigration of skilled Palestinians, often connected to political and economic deterioration in the occupied Palestinian territory, is dealt with as a problem because it deprives Palestinian society of highly-skilled professionals, and makes it impossible for them to contribute to the Palestinian economy. Various works have shown that “the continual loss, through emigration, of skilled and highly educated individuals from Palestinian communities in West Bank and Gaza Strip meant their deprivation from the more innovative and dynamic members” (Hilal 2007, 30). And in the PA Council of Ministers annual report (for the period between 16/6/2007-16/6/2008) this phenomenon was considered one of the obstacles to re-construction and development (PA-Presidency of the Council of Ministers 2008, 37).

²⁶ According to the Palestinian Central Bureau of Statistics (cited in Hanafi 2008, 96), the number of the Palestinians with habitual residence abroad, who returned to the Palestinian territories arose to 267,355, i.e. 10% of the total population.

A report was published in 2007 by the Palestinian Central Bureau of Statistics (available at: http://www.pcbs.gov.ps/Portals/_PCBS/Downloads/book1487.pdf). According to the report (p.92) the number of Foreign-Born Palestinian Population (only in the Remaining West Bank) in 2007 was 125,581. This number is slightly inferior to the number of foreign born Palestinian population in the West Bank 1997 (available at: http://www.pcbs.gov.ps/Portals/_pcbs/phc_97/2037c758-f8db-4f66-9a0f-e5bcea387235.aspx).

²⁷ It should be noted that, the fact that a large number of Palestinians hold a foreign passport (besides the PA travel document), that they have relatives in foreign countries, and that they may not need a visa to enter certain countries (such as Jordan for Palestinians on the West Bank) facilitated this movement (Bocco *et al* 2001, 36).

²⁸ According to reports by the PA Foreign Ministry, reported in The Jerusalem Post (June 10, 2007): <http://www.jpost.com/servlet/Satellite?cid=1181228581339&pagename=JPost%2FJPArticle%2FShowFull>

²⁹ 29% of people surveyed; see: <http://www.neareastconsulting.com/surveys/all/p43/>

The former PA Minister of Planning, Samir Abdalla, is reported by PNN (Palestine News Network) to have said (in 25.3.2008) that the migration of highly-skilled Palestinians has slowed since relations with donor communities have been restored. http://arabic.pnn.ps/index.php?option=com_content&task=view&id=28509&Itemid=45

It is unclear though, to which data (if any) the former Minister of Planning was referring in making this claim.

The danger of this phenomenon, however, goes beyond economic or social factors; and thus, beyond the emigration of skilled Palestinians. It has a clear national dimension (perceived as dangerous for the Palestinian cause as a whole, and for the resistance to occupation), and more interestingly, it has even acquired a religious dimension!³⁰

The main concern of the PA was in encouraging the ‘return’ of Palestinians, not their departure. It seems comprehensible then that the PA would be reticent in encouraging, coordinating or giving incentives for emigration. The PA, fearing the impact on Palestinian unity,³¹ did not even deal publicly with the issue; but when it did, it was clear that the PA did not have a specific policy with regards to emigration (Hanafi 2005b, 14).

However, despite this reticence, there are no laws forbidding, or policies restricting the migration of highly-skilled professionals. But even if there were, it is difficult to imagine how the PA could enforce such rules while not in control of its own borders. The PA, indeed, has no legal tools or jurisdiction to enforce policies aimed at reducing or regulating this issue.³²

VII. Collaboration with Foreign Academic Institutions

The Higher Education Law No.11 of 1998, states that institutes of higher education should, *inter alia*, open the way for all qualified students to enter higher education and also follow up and develop the educational capabilities of these students domestically and abroad (art.4/1). The law then proceeds and enumerates the ‘responsibilities’ of the Ministry of Higher Education in this regard.³³ It should be

³⁰ The PA grand mufti had taken an unprecedented step of issuing a fatwa forbidding Muslims to emigrate (Abu Toameh 2007). As for Christian churches, the emigration of Christians from Palestine was always a matter of concern, though it is not limited to the occupied Palestinian territory, it is often related to the Israeli occupation. See different reports published in local and international news, such as: “Strife Spurs Slow Exodus of West Bank Christians” published in Los Angeles Times (April 14, 2005): <http://articles.latimes.com/2005/apr/14/world/fg-holyland14> and a report about a recent document by Vatican, published on Al-Quds (January 20, 2010): <http://www.alquds.com/node/231015>.

³¹ Until recently, the issue of emigration was not well debated, researched or assessed. As noted by (Bocco et al 2001, 35), “[t]he emigration phenomenon seems to be a well-kept secret, and it is easy to understand why. Reporting about it may well be perceived as detrimental to Palestinian national unity.”

³² While one may argue that Israel, which often restricted entry or re-entry of Palestinians, would have no particular interest in coordinating with the PA the issue of emigration of Palestinians, it is a matter of fact that, during the second Intifada, it was Jordan that unilaterally imposed restrictions on the entry of Palestinians to the West Bank so as to avoid the danger of mass migration (Hanafi 2005b, 11). Similarly, it was Egypt, again unilaterally, that imposed restrictions on the entry of Gaza Palestinians to Egypt in 2007, following the Israelis laying siege to Gaza.

³³ The Ministry of Higher Education has the following responsibilities: “...3) To conclude official governmental agreements relating to the organization of international cooperation relations in the field of higher-education development... 10) To coordinate the affairs of expatriate students and teachers according to the agreements and contracts concluded with their States. 11) To recognize the Arab and foreign higher-education institutions, form the committees which are concerned therewith, organize the activities of student service offices, supervise the affairs thereof, publish the tables relating to the names and addresses of the recognized universities and any amendment made thereon. 12) To specify the conditions according to which the foreign higher education institutions would be allowed to establish branches or institutions thereto in Palestine as well as grant them the necessary licenses for the carrying out of the work thereof. 13) To formulate the general policy for scholarships, grants, education assistance and to follow up the affairs within the country and abroad as well as formulating the regulations and instructions for the implementation of this policy. 14) To recommend the consultants and attachés for the strengthening of cultural relations with sister and friendly countries. 15) To provide the additional sources of funds necessary for making up the coverage of the expenses relating to Palestinian higher-education and scientific research institutions as well as defining the basis and mechanism of the distribution thereof. 16) To coordinate with the Ministries and concerned parties in formulating the regulations for licensing the practice of occupations which require scientific qualifications. 17) To determine the minimum averages in the general secondary education certificate examinations or the equivalent thereof as a basis for acceptance in the Palestinian higher education institutions. 18) To fix the number of students who are permitted to be accepted with every one of the Palestinian higher education institutions on the basis according to which such institutions and educational programmes are accredited in the light of the potentials thereof. 19) To approve the holding of any general

noted, however, that the Palestinian universities are older than the PA itself. As a matter of fact, they are mostly autonomous private institutions.

Many Palestinian universities established cooperation agreements with other universities to facilitate the exchange of students and professors. Since no Palestinian university grants Ph.D. degrees, some Palestinian students need to study abroad. Agreements with foreign universities often include arrangements to host Palestinian students in foreign universities. Those who receive a scholarship through the university often sign an agreement with the local university to return once the studies abroad are terminated to work at local universities for a number of years. There are also several joint programs (and joint degrees) between Palestinian local universities and foreign universities. Such programs encourage the exchange of students and professors. This is the case, for example, with “Erasmus Mundus University II”,³⁴ and PEACE Programme.³⁵

It should be noted, finally, that the crucial problem pertaining to higher education in the occupied Palestinian territory is not necessarily a lack of academic skills, but rather the negative correlation between the growing numbers of academically-skilled Palestinians and the narrow opportunities for the exploitation of these skills in the under-developed local labor market (Rosenfeld 2002, 531). Accordingly, it is crucial that any policy or law dealing with HSM investigates the incentives and opportunities that the local work market is offering.

VIII. Temporary and Virtual Return

If one admits that the participation of skilled Palestinians is vital to the construction of a viable Palestinian state (Hanafi 2005c), then given the impossibility of permanent physical return due to Israeli restrictions, even a temporary return remains an option worth exploring.³⁶ In this same perspective, two initiatives, referred to rightly as “Promising Arab Initiatives”,³⁷ are worth exploring: TOKTEN and PALESTA. Both are unofficial (not PLO or PA sponsored) and aim at establishing contact between highly-skilled Palestinians in the Diaspora and the country of origin. The former encourages their temporal or permanent return, the latter aims at creating links, using technology (internet) as a way to help local Palestinian institutions profit from highly-skilled Palestinians in the Diaspora.

TOKTEN stands for Transfer of Knowledge through Expatriate Nationals. It is a global UNDP mechanism to attract expatriate nationals, who have migrated to other countries and have achieved

(Contd.) _____

examinations after the general secondary exam which the higher-education institution deems necessary. 20) To equalize and certify higher-education certificates and the general secondary education certificate or the equivalent thereof according to the equalization and certification regulations.”

³⁴ This program, established within the framework of the new European mobility program (Erasmus Mundus External Cooperation Window), was approved by the European Commission. The Vrije Universiteit Brussel took a lead in setting up a consortium of 20 universities, 10 from Europe and 10 from Egypt, Palestine and Israel which are partners of Erasmus Mundus University II. Partner Palestinian Universities are: An Najah National University, Nablus, Al Quds University, Jerusalem, Arab American University, Jenin, Al Azhar University, Gaza, Community College of Applied Science and Technology, Gaza. For more about the program, see http://portal.unesco.org/education/en/ev.php-URL_ID=54247&URL_DO=DO_TOPIC&URL_SECTION=201.html

³⁵ PEACE stands for “Palestinian-European-American Cooperation in Education”. The program was established in 1992 under UNESCO. The objectives of PEACE are: “Promoting international cooperation with Palestinian Universities through: exchange of staff and students; grants for Palestinian students and young academics to complete graduate studies abroad; academic projects aimed at enhancing teaching and research at Palestinian higher education institutions.” There are 61 member institutions in 18 countries and territories in this program. For more, see: http://portal.unesco.org/education/en/ev.php-URL_ID=52853&URL_DO=DO_TOPIC&URL_SECTION=201.html

³⁶ For more about such initiatives for facilitating the temporary return of skilled Palestinians of the Diaspora see Hanafi (2008, 99) who refers to ‘virtual return’, see below section VIII.

³⁷ This is the way the Population Policies and Migration Department of the League of Arab States referred to those initiatives in its report of 2008. For more, see Section III.

professional success abroad, and to mobilize them in undertaking short-term consultancies in their countries of origin, under the UN umbrella.³⁸ TOKTEN is often cited as a 'Brain Gain' success story. More than 400 Palestinian experts have contributed to Palestinian development through TOKTEN.³⁹ Successful and promising as this may be, the return of skilled professional individuals has though been marginal (Hanafi 2005a, 586).

PALESTA (Palestinian Scientists and Technologists Aboard) is an Internet-based network. It is funded by UNDP and hosted by the PA Ministry of Planning (Hanafi 2005b, 27). Its aim is to cover the gap created by the limited physical return of Palestinian professionals, by enabling communication and exchange between Palestinian professionals and the Palestinian homeland.⁴⁰

The UNDP, however, reported several challenges that are facing PALESTA, including a low participation rate, the lack of interaction among network members, the inability to mobilise local organisations to identify problems that obstruct development in the Palestinian Territories; and insufficient co-operation between PALESTA and local institutions and ministries (UNDP- Capacity Development Group, 2007, 17).

IX. Conclusion

The PA has no jurisdiction over the borders of the occupied Palestinian territory, nor over the Palestinian population registry. The West Bank and Gaza Strip are still deemed occupied territory, and Israel an occupying power. This fact explains why the PA did not legislate on most issues related to migration; and why, in those few cases where it did, the legislative product was ambiguous and indeterminate, with regards to who is a Palestinian for the purposes of the law and who is not.⁴¹ Besides, the PA policies towards the 'return' of Palestinians, though largely compatible with the objective of establishing a Palestinian state for all Palestinians, were nonetheless largely dealt with on an *ad hoc* basis.

The first waves of Palestinians were, for the most part, absorbed by the nascent PA bureaucracy and security services; the PA has been the major job provider for the last 15 years. Now that it is saturated, and the tendency is reversed, different options need to be explored. The Palestinian economy is largely dependent on foreign aid and the Israeli Market and then undermined by unilateral restrictive acts on the part of Israel that leave the local labor market poor. The utopia of Palestine (now taken to mean the West Bank and Gaza Strip, while in reality the real jurisdiction of the PA is more restricted) for all Palestinians, needs to face the reality, to meet the many internal challenges, whether social (the integration of newly-arrived Palestinians, with different cultures, different levels of education, different experiences...) or economic (the possibility of creating new jobs, the viability of the PA public sector to absorb and maintain the huge number of civil servants and military and security agents, the poverty level and the dependency on international aid). Similar doubts can be raised with regards to the possibility of accommodating skilled Palestinians in jobs that are adequate to their specializations and professions, in order to make it possible to profit from their knowledge and skills.

The doubts I express and the arguments I make are not related to the incapacity of the West Bank and Gaza Strip, to accommodate new arrivals, and new skilled immigrants. It is rather related to the absence of a framework related to the HSM and migration in general: the absence of legal regulations makes the process unpredictable, depending on *ad hoc* measures undertaken by the PA, host countries, and Israel. Besides, the absence of policies means that issues of national concerns will be left to

³⁸ For more, <http://www.toktenpalestine.org/page.aspx?pid=1>

³⁹ <http://www.toktenpalestine.org/page.aspx?pid=3>

⁴⁰ For an extended discussion of TOKTEN and PALESTA and their impact, see Hanafi (2005a).

⁴¹ For more, see: Khalil 2006.

individual initiatives. Such individual initiatives will be vulnerable to crisis, whether related to the occupation itself or not.

The fact that Israel maintains control of the borders and the population registry does indeed mean that the PA can postpone dealing with issues of migration, and avoid the formation of laws, regulations and even policies. The weak labor market, the high level of unemployment, and the fragmented and dependent economy, are all serious indicators that the West Bank and Gaza Strip in their current shape are incapable of absorbing new arrivals and of satisfying the needs of its population. Given the possible unattractiveness of its labor market for highly-skilled migrants, the West Bank and Gaza Strip may witness a very pervasive movement of migration: the tendency of skilled Palestinians to migrate may intensify, while only under-skilled Palestinians, with no better chances abroad, will be make their 'return' to the weak economy of the West Bank and in Gaza Strip.

In this sense, the recent interest of the PA in issues of migration is something to be encouraged: better late than never!⁴² This revival should not be limited in the interests of the 'dangerous' phenomenon of skilled Palestinian emigration; rather, the PA should also look at the reasons for migration (lack of economic opportunities, political and security instability, which leads to "hardship and hopelessness, especially for the Young" (Lubbad 2008, 3)); the PA should concentrate on the creation of an attractive economy and a market that can absorb skilled Palestinians.⁴³ If, and when, this happens, many skilled Palestinians, largely absorbed by the national labor market, would have less temptation to leave. While the skilled Palestinians of the Diaspora cannot only 'return' to the West Bank and Gaza Strip, but they can also find motivations to stay longer, maybe permanently in the West Bank and Gaza Strip, contributing to building the Palestinian state.

PA policies should be based on the knowledge of the real capacity of the local market and of the needs of the West Bank and Gaza Strip. The PA, in other words, does not only need to encourage the return of skilled migrants; it needs to make their return work; not a burden for the PA, and not a disappointment for the skilled and professional Palestinians, but a success story. These skilled Palestinians may be facing the hard reality of whether to stay physically but unemployed in Palestine, and to suffer political and economic instability there, or to re-emigrate to other countries, whenever they have the opportunity. The available data regarding migratory movements during the second *Intifada*,⁴⁴ and following the Siege of Gaza, intensified in 2007,⁴⁵ suggests that they may choose the second option.

But it must also be said that the fact that the Palestinians look for better jobs, a better level of life, in the absence of alternatives in the territories under PA control, is a completely understandable concern; this has been the case historically, and still is, for many populations all over the world. The 'national' interest in keeping Palestinians in Palestine, and most importantly, keeping skilled Palestinians in the occupied Palestinian territories to build 'Palestine' is also a legitimate national concern. However, this does not mean that the PA should reject, *a priori*, a variety of options because they are, or seem to be, 'politically incorrect'.

To 'put an end' to the emigration of skilled Palestinians, the PA need not adopt restrictive measures towards those Palestinians wanting to exercise their right to freedom of movement. Rather, this phenomenon needs to be dealt with by looking at the reasons behind their departure, and the necessary incentives for them to stay. One may object: "Easy to say, difficult to do." And the point is a valid one.

⁴² See section IV.

⁴³ I am aware of the fact that many of the issues that I have raised here are largely out of the control of the PA itself, given the unilateral Israeli acts towards the Palestinians people and their land which renders any development efforts an impossibility.

⁴⁴ See section VI.

⁴⁵ According to Associated Press, thousands of Palestinians are faking illness to flee the Gaza siege. See full article in Haaretz (12.10.2009), available at: <http://www.haaretz.com/hasen/spages/1134137.html>

After all, there is no denying the already difficult financial difficulties of the PA, the economic fragility of the West Bank and the Gaza Strip, and the PA's complete dependency on donors; not to mention the internal division between the Hamas-controlled Gaza Strip and the PA-controlled West Bank. But what is the alternative? People are already emigrating. It is most important not to force them to stay – it would, in any case, be impossible. Then, why not encourage them to reach their objectives in a way that meshes with national interest?

For those willing to emigrate, or those who have already emigrated, the PA, despite the reticence it has shown until now, should work on arranging and coordinating with host countries to facilitate migrants integration in host countries' work markets. Indeed, their work situation, their rights and their freedoms in Arab or foreign markets should be at the center of the PA's concerns. Given the nature of the PA, as a non-sovereign entity, there is a need for full cooperation with PLO offices and host countries. Most importantly, given the nature of current waves of migration, largely dependent on unofficial networks (family or relatives, or private initiatives), the PA does not need to replace but to compliment a pre-existing structure, often the only safety nets for Palestinians in the Diaspora.

The PA might even work on arranging the departure (and later on the return) of skilled Palestinians, in the framework of bilateral agreements with neighboring Arab states or other states: if people emigrate, why not make planned arrangements? Despite the many likely inconveniences, the emigration of Palestinians may contribute to decreasing unemployment rates within the young, well-educated and highly-skilled population that the local market cannot absorb. The PA may also give due consideration to the positive impact of the work of Palestinian migrants in foreign countries, towards the development of the Palestinian national economy (through the injection of remittance capital into the local economy). This may have also increase PA assets, thus decreasing the dependency of the PA on foreign aid.

In all circumstances, the Israeli occupation, the siege of Gaza Strip, and the fragmentation of the West Bank are major obstacles to developing a viable and attractive Palestinian economy. Many issues related to migration, currently unregulated and unplanned, will need to be dealt with, when and if the PA take control of the movement of population, to and from the West Bank and Gaza Strip. While still under occupation, the legal regulation, the definition of who is a Palestinian and who is not, will, at best, be irrelevant, given the Israeli control of both the borders and the population register. This does not mean though that the PA has to avoid dealing with migration issues all together.

Some may suspect that any policies aimed at coordinating the departure and the arrival of skilled Palestinians may be contrary to Palestinian national interest (for fear of losing the demographic challenge, or for fear of their impact on the right of return). This report does not exclude that this may be the case; what this paper argues is that, the PA needs to take seriously the needs of the population under its jurisdiction, and take the necessary actions to ameliorate their situation. Most importantly, this paper challenges the overwhelming tendency to prioritize the national interest over an individual's freedom to opt for better life, for themselves and for their families.

Even if the PA decides to continue, as a matter of national policy, discouraging the departure of Palestinians, and encouraging the 'return' of the Palestinians of the Diaspora – thus maintaining the *status quo*, it will no longer be an arbitrary decision, a reaction to circumstances and others' decisions (whether host countries, Israel, or even private initiatives), rather it will be a reflected and planned solution. Not taking action is a decision that one may or may not agree with, but it remains a more attractive option than not taking a decision at all.

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