

Measures for Ministerial Committee on the Establishment of a Palestinian Border Services Agency (PBSA).

This note proposes the immediate adoption of a number of measures that are required to establish the PBSA.

Overall Recommendations

1. On October 20, 2005, the Cabinet approved the establishment of a PBSA. The decision of Cabinet reads as follows:

“Confirming in principle the establishment of a Palestinian Border Services Agency and creating a Ministerial Committee for this purpose made up of Ministry of Planning (as the committee coordinator), Ministry of Interior and National Security, Ministry of National Economy, Ministry of Civil Affairs, Ministry of Agriculture, Ministry of Transportation, Ministry of Health, Ministry of Tourism and Antiquities to determine the mandate and systems and establishment of the agency”.

2. To follow up on the Cabinet decision of October 20, it is proposed that the Committee of Ministers created for the establishment of the PBSA make the following recommendations to Cabinet:

a) That the preliminary mandate of the PBSA be as follows:

- Manage the flow of goods and people at approved ports of entry in accordance with national legislation.
- Develop national policies and procedures applicable to the entry and exit of travellers and commercial goods at approved ports of entry and apply them uniformly at each terminal.
- Collect the taxes and duties owing and enforce the terms of the applicable trade agreements.
- Enforce the laws regulations and standards within the jurisdiction of other departments in so far as they are applicable at the border.
- Enforce the laws that prohibit or regulate the entry or exit of travellers or goods at ports of entry.

b) That the PBSA be set up as an authority under the oversight of a board which would be composed of representatives from the public and private sectors.

c) That the PBSA be established by legislation similar to the legislation creating the Land, Water, Energy, and Environment Authorities.

d) That initially the PBSA will be accountable through the Prime Minister who will be the Chairman of the Board.

e) That the head of the border authority be appointed as soon as possible at a ministerial level.

f) That the head of the authority be mandated to develop and submit to the committee for its approval an implementation plan within two months of his/her appointment and that such an implementation plan include:

- a human resource plan.
- funding mechanisms supported by the Department of Finance and the donors community.
- a comprehensive role for the border authority with clear relationships to the other departments.
- a clear understanding of the contributions expected from the international community to the establishment of a comprehensive border management regime.

g) The unified border organization be referred to as the “Palestinian Border Services Agency”.

Background

3. Until now the role of the PNA at border crossings has been limited to facilitating the flow of goods and people between the Territories and Israel. Since the Territories are not an independent state and because there is a customs union between the parties those border crossings are effectively security check points by Israel and are not performing the functions of international border crossings.

4. An international crossing control is an important exercise in sovereignty and a key tool to collect revenues, administer trade agreements and protect society against threats to the health or security of the residents, threats to the health of the animals or plants or threats against the environment.

5. As the stated goal of the PNA is to assume full responsibility for the management of the border crossing with Egypt as well as full responsibility for the border controls at the airport and the seaport in the near future and eventually at the border crossings with Jordan and Israel it is imperative that preparations start immediately.

6. It takes a lot of preparations to run a national system of border crossings. Some of the issues to be addressed include legislation, regulations, policies procedures, organizational structure, human resources, financial systems, information technology systems, physical assets, equipment and relationships with partners and clients. The PNA has done some preparation to open the border crossing for pedestrians at Rafah with the assistance of the EU but much more needs to be done if the PNA wants to develop the

capacity to process the importation of goods at Rafah as well as exercise full border controls at the airport and seaport.

7. On October 2 the World Bank shared with the PNA a concept note prepared by the Bank technical team where the Bank recommended the creation of a unified Palestinian border management agency. The note (a copy is attached) outlines the benefits that would be derived from the creation of such an agency.

8. The creation of that agency was recommended as a necessary first step in developing an adequate border management capacity. Once the Agency is in place it will serve as a key partner with whom the donors (the EU, the World Bank, the US, Canada and the IMF) will plan and implement their assistance programs. Without such a unified agency that assistance will not be as effective or efficient and will certainly not be as timely.

Issues

9. In order to proceed with the establishment of the PBSA a number of issues have to be addressed which include:

- Governance
- Human resources policy
- Development of implementation plan
- Budget
- Donors assistance
- Head of border organization
- Mandate

10. Governance: The organization in charge of borders could either be an **agency** or an **authority**. An **agency** would be headed by a senior bureaucrat at the deputy minister level who would report to a minister. It would be clear in the legislation creating the agency that the head of the agency is responsible for the day to day operations of the agency while the minister is accountable for the overall performance of the agency.

An **authority** would be headed by a senior bureaucrat at the ministerial level who would report to a board of trustees composed of members from both the public and the private sectors. The manner of selecting the board members would be set in legislation.

11. It is recommended that given the importance that the agency will assume in asserting the sovereignty of the state and its contribution to the national economy it is recommended that it be headed by a bureaucrat at the Ministerial level. Also because the border organization will interact closely with many departments and the private sector the supervision of the agency by a board with appropriate representation from both the public and private sectors is advisable. It is therefore recommended that the PBSA be created by legislation on the model of the legislation establishing the Land, Water, Energy and Environmental Authorities. It is further recommended that initially the PBSA be accountable through the Prime Minister who would also be the Chairman of the

Board.

12. Human resources policy: At present the PNA does not have an organization responsible for international border crossings since all international crossings are managed by the Government of Israel. The PNA has a customs department as a part of the Department of Finance but that department is not active at international borders and most of its activities are devoted to tax administration (with the exception of the current developments at Ra'fah). The PNA also has a number of services that assist the movement of goods at the Israeli security check points between GWB and Israel. Those services however do not perform the functions of international border crossings.

A border management organization normally focuses most of its attention on imports: collection of taxes and duties; administration of trade agreements; protection of its citizens, animals, plants and its environment against health and security threats; enforcement of a myriad of regulations and standards which include regulations related to road safety amongst others. The border management organization also has to manage exports in the manner provided by law.

It is important to develop a good cadre of professional border managers who will perform all the functions mentioned above in close cooperation with the other departments and the private sector.

13. It is recommended that a human resource policy for the staffing of the organization and the training of its employees be developed for the approval of the ministers.

14. Development of implementation plan: To bring the border organization into being in an orderly fashion it will be necessary to develop a plan of action to deal with the following issues:

- Define the exact role of the border organization,
- Corporate legislation,
- Program legislation, policies, procedures and processes,
- Corporate structure and organization,
- Human resources,
- Financial resources,
- Systems and
- Local border crossing management structure.

15. In developing the implementation plan it will be necessary to factor in the coordinated input of the donors. It will also be necessary to ensure that the immediate measures that need to be taken in respect of Rafah will be implemented in parallel with the establishment of the border organization.

15. It is recommended to develop an implementation plan as soon as possible for the approval of the ministers.

16. Budget: This project will only be successful if it is properly funded. **It is recommended that early discussions should be initiated with the Department of**

Finance and the donors to ensure that the implementation plan is realistic and will be funded.

17. Donors assistance: Many donors, including the EU, the US, Canada, the World Bank and the IMF have indicated a willingness to assist the PNA establish a professional cadre of border managers who are well equipped to credibly assume responsibility for Palestine external borders.

18. It is recommended that the PNA should work with the donors community to ensure that the technical assistance is well coordinated.

19. Appointments: If a taskforce is appointed to establish the PBNA a lot of knowledge and expertise will be lost when the responsibilities to manage the border organization are transferred to the permanent staff. It is much preferable to appoint the head of the agency as soon as possible and task him/her to develop an implementation plan and carry that plan through.

20. It is recommended to recommend to Cabinet to appoint the head of the PBNA as soon as possible.

21. Mandate: The purpose of creating a single national agency is to ensure a uniform application of all the laws and regulations applicable to the movement of goods and people at approved border crossings. A single management structure allows for the most efficient flow of information to the front line officers to assist them in their efforts to identify and intercept high risk goods and people. Also having only one management structure provides clear line of accountability for the management of borders. Finally the PBSA will provide a single window for the business community on border issues. The objective of border officers is to establish the right balance between security and facilitation. As such they should be part of a civilian organization devoted to free and secure trade.

22. The PBSA should not be responsible for the protection of the border between the approved border crossings. The protection of the land border or the coast line, other than at the approved points of entry (land border crossings, airports or seaports) is more akin to police work and should be the responsibility of the appropriate security organization. Moreover the PBSA will rely on the assistance of the appropriate security organization to protect its officers and its facilities as required. Also the PBSA will have the power to arrest people and seize goods at the border but it will turn over the prisoners and prohibited goods to the appropriate security authority for prosecution.

23. It is recommended that The PBSA should be fully responsible for the management of the movement of goods and people at all the approved border crossings including the airport and the seaport but it should not develop the internal capacity to do police work, rather it should get police support when required from the police of the appropriate jurisdiction.

Timing

24. The PNA intends to start operating Rafah, the airport and the seaport as soon as possible. The establishment of the PBSA and the development of an integrated border management work program in cooperation with the donor community at this time will ensure that the PNA develops the capacity to assume the responsibility of the management of its border crossings at an early date. **Any delay will adversely affect the credibility of the PNA with regards to its ability to ensure the security of its citizens and of its environment.**