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INCENTIVES FOR PEACE AND PROFITS: FEDERAL LEGISLATION TO ENCOURAGE U.S. ENTERPRISES TO INVEST IN ARAB-ISRAELI JOINT VENTURES

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* Visiting Fellow, Begin-Sadat Center for Strategic Studies. Stanford Law School, J.D. (1993). This article was originally written in the spring of 1993 with the guidance of Professor Byron D. Sher. I thank him, Professor Barbara Fried, and my friend Nabil Istafanous for their comments. I also thank the Haas-Koshland Foundation for its support.

Since this piece was first written, the author has established the Middle East Trade and Investment Center (METIC, Inc.) together with a team of consultants in the private sector. The scope of the Center is similar to, although not as broad as, the scope of the investment agency envisioned in this article.

INTRODUCTION

This article proposes a set of provisions that would encourage U.S. companies and entities to invest in joint ventures with Israeli *and* Arab partners in the Middle East. The immediate effect of these provisions would be to revive and fortify the economies of that region. The long-term objectives behind the enactment of such incentives would be threefold: (1) to improve the prospects for peace and stability in the Middle East; (2) to enhance the strategic and political standing of the United States in the Middle East; and (3) to increase the long-term international competitiveness of U.S. businesses.

Four specific measures which could be pursued by the United States to encourage U.S. companies to invest in Arab-Israeli joint ventures are suggested in this article. First, the United States could grant tax incentives to eligible U.S. entities (i.e., those that meet the necessary criteria elaborated in Part II) that enter into qualifying joint ventures with Arab and Israeli partners. The incentives could take the form of tax credits, accelerated depreciation allowances, wage tax deduction allowances, or preferential tax rates. The tax incentives would vary depending on the "labor mix" or equity composition of the joint venture in question. The most advantageous treatment would be accorded to joint ventures in which each of the Arab, Israeli, and U.S. partners held one-third of the enterprise's equity, and in which Arab and Israeli workers accounted for equal shares of the labor pool.

Second, the United States could provide grants or loan guarantees to companies that decide to invest in the aforementioned joint ventures. This program could be administered by the Overseas Private Investment Corporation (OPIC), a government agency which already performs similar functions. Approval of such guarantees could be subject to review by a committee that would ensure that the investment conforms with the best interests of the United States and promotes coexistence between Arabs and Israelis.

Third, the United States could provide war risk, political risk, and currency inconvertibility or currency volatility insurance at subsidized rates to U.S. companies wishing to enter into Arab-Israeli-U.S. joint ventures, but which have hesitated to enter into a seemingly profitable venture due to fears of instability abroad. Similar political risk insurance, at market rates, is already offered by OPIC on an ad hoc basis. As with loan guarantees, political risk insurance could be placed under OPIC's auspices. In addition to the requirements set forth in the previous paragraph, grants of political risk insurance could be made contingent on success of a business feasibility study, thus ensuring that risk is managed and minimized by the government agency.

Fourth, Congress could create an investment agency, a government entity dedicated to assisting U.S. companies in overcoming bureaucratic as well as cultural barriers. The investment agency would be lightly staffed by specialists with experience trading in the Middle East. Its services would range from dealing with government red tape to making connections, alerting U.S. companies about opportunities abroad, and providing guidance about national differences.

This article discusses all four of these measures. In Part I, the article addresses the rationale for enacting U.S. legislation to encourage this type of investment in the Middle East. It points out that due to recent developments in the Middle East, now would be a very profitable time for the United States to support joint ventures in the region, and it discusses the role that the United States could play in the peace process. In Part II, the mechanics of the proposed measures are examined. Four types of incentives are discussed that could be used to encourage investment in the Middle East, and then problems common to all four of these methods are addressed. Part III shows the way in which the new legislation could be enacted in the context of the current U.S. legislative scheme. Part IV reviews current efforts by the United States to encourage economic development in the Middle East and points out how the measures advanced in this article differ from these efforts. Finally, Part V considers whether the current political climate in both the United States and the Middle East favors the establishment of the investment incentives proposed in this article.

I. The Rationale: Why Enact Such Legislation?

From a geo-strategic and military viewpoint, as well as from a business and humanitarian perspective, the United States has an interest in keeping the Middle East safe. The United States has sought to foster regional stability in order to prevent nuclear proliferation, preserve free access to natural resources, and promote democracy and human rights. The United States has traditionally benefitted from a very close strategic alliance with Israel. However, since its foundation in 1948, Israel has been in a state of war or belligerency with most Arab countries. With the exception of Egypt, Israel enjoys no diplomatic relations with any Arab country. This has often caused friction in U.S.-Arab relations and has harmed U.S. interests. The demise of the Soviet Union, however, brought with it an opportunity for improved U.S. relations with Arab countries without the United States having to compromise relations with Israel. Strong alliances with some Arab governments have been forged ever since the 1991 Gulf War against Iraq, in which the United States led an international coalition that included Arab forces.

The United States has positioned itself at the forefront of efforts to achieve peace among Israel and its Arab neighbors, hoping that a settlement of the conflict would enable it to profit from closer relations with both. The urgency of achieving a settlement of this intractable feud has been underscored by recent threats by religious fundamentalism and nationalist fanaticism to all participants: the United States, Israel, and the majority of Arab governments. Closer relations of the United States with both sides of the conflict would increase regional security, decrease defense expenditures, expand trade opportunities, increase the quality of life, and aid in the fight against destabilizing forces, such as Islamic fundamentalists that seek to overthrow U.S. allies in the Middle East.

A. *Recent Developments in the Middle East*

Recent and unprecedented developments in the Middle East point in the direction of peace. The startling mutual recognition between Israel and the Palestine Liberation Organization (PLO), brokered by Norway's Foreign Minister, Johan Jorgen Holst,[1] proved that nothing is impossible in the Middle East. The subsequent signing of the Israeli-Palestinian Declaration of Principles at the White House[2] gave impetus to efforts to resolve the broader feud between Israel and its neighbors, Syria, Lebanon, and Jordan.[3] Just one day after the handshake between Yitzhak Rabin, Israel's prime minister, and Yasser Arafat, the chairman of the PLO, Jordan signed a breakthrough accord with Israel, agreeing on an agenda for future negotiations.[4] This accord was followed by an economic cooperation agreement between Jordan and Israel.[5] While the Syrian and Lebanese tracks have been at an impasse for Israel — mainly because Prime Minister Rabin has indicated that the Israeli public needs some time to absorb the already monumental changes it is experiencing — a gesture of genuine interest in peace by Hafez Assad, the president of Syria, could ready Israelis for an agreement on those fronts too.[6]

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1. *See, e.g.*, Kevin Fedarko, *Swimming the Oslo Channel*, TIME, Sept. 13, 1993, at 50; *see also* Clyde Haberman, *P.L.O. and Israel Accept Each Other After 3 Decades of Relentless Strife*, N.Y. TIMES, Sept. 10, 1993, at A1.

2. *See, e.g.*, Thomas L. Friedman, *Rabin and Arafat Seal Their Accord as Clinton Applauds 'Brave Gamble'*, N.Y. TIMES, Sept. 14, 1993, at A1; George J. Church, *All Together Now*, TIME, Sept. 20, 1993, at 36.

3. Owing to intensive U.S. diplomatic efforts, Israel has been engaging in direct negotiations with all three countries for two years now. *See, e.g.*, Jackson Diehl, *Israel, Arabs Meet for Historic Peace Talks*, WASH. POST, Oct. 31, 1991, at A1.

4. *See* Elaine Sciolino, *Jordan and Israel Agree on a Basis for Finding Peace*, N.Y. TIMES, Sept. 15, 1993, at A1.

5. *See infra* text accompanying notes 205–208.

6. *See* William E. Schmidt, *Syrian Leader Plays a Waiting Game*, N.Y. TIMES, Sept. 21, 1993, at A8.

Regional peace talks, whose participants include Saudi Arabia, Kuwait, Morocco, and other Arab countries, have also progressed.[7] For the first time, Arab countries exhibited readiness to partake in joint regional projects with Israel and agreed to host multilateral peace talks in the Middle East.[8] Four of the five panels on regional issues will hold their next sessions, scheduled for the spring of 1994, in Arab countries: Qatar will host arms control talks (marking the first time that an Israeli delegation is officially invited to Qatar);[9] Oman will host talks on water;[10] Morocco will be the host of economic development talks;[11] and Egypt will host refugee discussions.[12] In addition, Kuwait announced that it would drop its secondary economic boycott of Israel.[13] Furthermore, Morocco's King Hassan welcomed Prime Minister Rabin amid reports that Morocco was close to entering into diplomatic relations with Israel.[14]

B. *Using Economics to Advance Peace*

In the context of the developments in the Middle East, one way to improve the prospects for peace would be through the use of economic incentives. Economic interaction between two countries not only produces economic gains, it also increases political and regional stability. Under the right conditions, nations that engage in sufficient economic transactions will at some point become interdependent and share a vested interest in maintaining peaceful relations with their economic partners. Under ideal conditions, economic interaction also brings down cultural barriers and dampens long-running animosities. As Arabs and Israelis interact with one another and learn to work together, the enemy will be humanized and stereotypes will be debunked. Economic interaction thus cements coexistence.

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7. *See, e.g.*, Thomas L. Friedman, *Arab-Israel Talks on Regional Issues Start in Moscow*, N.Y. TIMES, Jan. 29, 1992, at A1, A8.

8. *See* David Makovsky, *Multilateral Arms Control Talks to Be Held in Qatar in Spring*, JERUSALEM POST, Dec. 17, 1993, at A3.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. David Makovsky, *Kuwait Lifts Secondary Boycott of Israel*, JERUSALEM POST, June 9, 1993, News Section; *Peres Praises Kuwait for Lifting Boycott*, MIDDLE E. INTELLIGENCE REP., June 8, 1993; *see also* Martin Sieff, *Saudis, Kuwaitis Vow Easing of Israel Boycott*, WASH. TIMES, May 5, 1993, at A7.

14. Roger Cohen, *Rabin Meets Hassan, Reporting Step Toward Ties*, N.Y. TIMES, Sept. 15, 1993, at A16.

A positive cycle of peace and economic expansion could be set in motion in the Middle East: strong economic relations would enhance political stability; political stability, in turn, may create more certainty and safety in the market; market stability would then foster economic growth because investor confidence would be bolstered. As U.S. investors see the risks of war diminish, they may be more willing to take advantage of the enormous economic opportunities in the Middle East, including opportunities that stem from mixing Israeli and Arab factors of production according to each country's comparative advantages, and opportunities created by existing federal programs that reward U.S. companies for trading with U.S. allies in the Middle East.

Israelis and Palestinians view economic interaction and growth as so critical to long-term stability that two articles and two annexes to their Declaration of Principles address and recognize the mutual benefit of regional economic cooperation.[15] The envisaged agreement between them creates an Israeli-Palestinian Economic Cooperation Committee that is charged with developing and implementing a number of cooperative programs, as well as with encouraging other countries and international entities to invest in the region and provide economic assistance to the signatories.[16]

The prospect of economic prosperity could also act as an incentive for peace in the Middle East.[17] Highlighting existing benefits of economic cooperation and offering additional tangible long-term economic incentives may compensate for the immediate risks of concessions on the path toward peace. As countries see the economic benefits of peace materialize, they will be more willing to take measures in the region that will allow them to benefit. In this way, countries like Jordan, Morocco, Qatar, Saudi Arabia, Kuwait, Tunisia, and even Syria, all of which at one point or another have flirted with the possibility of establishing relations with Israel, may be prodded into taking their first step toward normalized relations.

The problem lies in breaking the negative cycle of mistrust, violence, and instability. Nations at war that have no economic relations with each other have few concrete shared interests that will push them

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15. Declaration of Principles between the Government of the State of Israel and the Palestine Liberation Organization, Sept. 13, 1993, arts. XI & XVI and annexes III & IV, *draft declaration reprinted in* N.Y. TIMES, Sept. 1, 1993, at A8.

16. *Id.* art. XI and annex IV.

17. *See generally* Daniel Lubetzky, The Influence of Economics In Resolving The Arab-Israeli Conflict (Apr. 30, 1990) (unpublished thesis, on file with author); Daniel Lubetzky, *Trouncing Barriers to Conflict Resolution: A Steer Toward Peace in the Middle East*, 1 STAN. J. INT'L AFF. 109 (1992).

toward peace. Mistrust and bad will outweigh the potential benefits of social and economic interaction. The state of war makes it impossible for opposing sides to enter into economic relations with each other. The risk of war alone discourages even internal investment and growth.

C. *The Role of the United States*

What the Middle East lacks is an intermediary that will highlight the benefits of peace and reward those bold enough to swim against the political tide of the status quo. A force is needed that will push countries gradually to overcome the relative sense of comfort in the status quo and to dare to take risks for peace. What is needed is a catalyst that can bring Arabs and Israelis together in a neutral setting where they will become necessary partners and will have to work together in order to succeed.

The United States could be the catalyst for peace, helping Arabs and Israelis work together. A U.S. company would be an ideal intermediary between two adversaries that have traditionally approached business in very different ways. It could be a key third party, serving as mediator, counselor, arbitrator, and friend. As a bridge between Arabs and Israelis, the U.S. partner would not only provide its share of capital, labor, or technology, but would also supply valuable interactive skills.

In addition to the inherent benefits that would inure to Middle Eastern countries and to the global community in general, the United States would benefit from this program in many ways. First and foremost, by bringing Arabs and Israelis together in a neutral work environment, the United States would hopefully, if slowly, bridge the gap between them and create a climate more conducive to lasting peace; the joint venture program would accelerate the positive effects of economic interaction on political conditions. This would enable the United States to maintain good relations with both Arabs and Israelis and to reap strategic and political benefits from those relations. The United States would thus also retain its title as the "leader" in the Middle East.

In addition, the U.S. government would help U.S. companies open vast markets that have thus far remained untapped.[18] Already, European countries have been known to subsidize their enterprises to enable them to enter Middle Eastern and other markets. The key to success in these markets is early entry. "[C]ompetition among business enterprises to

18. *See, e.g.*, Keith Bradsher, *U.S. Plans to Insure Soviet Deal*, N.Y. TIMES, Nov. 12, 1991, at D1.

secure overseas markets has intensified dramatically."[19] The United States must meet the challenges of an "increasingly competitive and interdependent global economic setting."[20]

U.S. corporations would be used as a diplomatic tool to advance U.S. economic and strategic goals. "[B]usiness enterprises can expect at times to be used as pawns in a national government's quest to achieve certain domestic or international goals."[21] This is not a new concept. It has been tested and has succeeded.[22] The idea first originated in 1950, when Benjamin A. Javits, brother of the late Senator Jacob K. Javits, wrote *Peace by Investment*.[23] The Investment Guaranties Division of the Agency for International Development (AID) was, from the outset, deemed "a foreign policy arm of the government."[24] And the basic standard used to decide whether or not to issue a guarantee was (and continues to be) "the extent [to which] the project would further U.S. foreign policy objectives."[25] Similarly, OPIC's goal is to make business enterprises "complement[] the development assistance objectives of the United States."[26] In addition, OPIC is required to take into consideration human rights records in prospective host countries before approving investment guarantees.[27]

The United States would also benefit economically from investment in the Middle East. The United States stands to gain when U.S. companies garner profits from these joint ventures. Helping U.S. companies succeed abroad is not only beneficial for maintaining their international competitiveness; it is imperative for the survival of the U.S. economy, given that international investment and trade are now an integral part of the economy.[28] In 1992, the United States exported over $365 billion,

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19. EARL H. FRY, THE POLITICS OF INTERNATIONAL INVESTMENT 1 (1983).

20. *Id.*

21. *Id.* at 3.

22. For example, several U.S.-based multinationals were used as pawns by the U.S. government during the Siberian natural gas controversy. *Id.*

23. BENJAMIN A. JAVITS, PEACE BY INVESTMENT (1950).

24. ALAN C. BRENNGLASS, THE OVERSEAS PRIVATE INVESTMENT CORPORATION: A STUDY IN POLITICAL RISK 11 (1983).

25. *Id.*

26. Foreign Assistance Act of 1969, Pub. L. No. 91-175, § 231, 83 Stat. 805, 807 (codified as amended at 22 U.S.C. §§ 2191–2200b (1988)) [hereinafter FAA of 1969].

27. 22 U.S.C. § 2199(i) (1988).

28. *See* FRY, *supra* note 19, at 7. By 1983, Americans had invested more than $227 billion abroad. *Id.* In 1990, Israel already had an imports market of $8 billion, and the United States was (and continues to be) a major exporter of products into Israel. ECONOMIC OFFICE, EMBASSY OF ISRAEL, WASHINGTON, D.C., GUIDE TO THE ISRAEL-U.S. FREE TRADE AREA AGREEMENT 4 (rev. ed. 1990) (copy on file with the *Michigan Journal of International Law*) [hereinafter GUIDE TO I-U.S. FTAA].

40% ($146 billion) of which went to developing nations and created one million U.S. jobs.[29]

D. *Advantages of Investing in the Middle East*

There are many reasons to invest in the Middle East, particularly now that the first rays of peace have begun to shine over the region.[30] Israel has significant economic potential. It boasts a highly educated and skilled labor pool,[31] which is relatively inexpensive.[32] A surplus of scientists and engineers,[33] provoked in part by the recent influx of Soviet immigrants, and leadership in developing advanced technology are also characteristic.[34] In addition, several laws encourage foreign direct investment and provide special incentives to attract it,[35] including tax breaks,[36]

29. AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE, WHY FOREIGN AID?, WE CAN'T AFFORD NOT TO 2 (4th ed. 1993) (copy on file with the *Michigan Journal of International Law*) [hereinafter WHY FOREIGN AID?]. U.S. exports to foreign aid recipients grew by 70% between 1986 and 1990. *Id.*

30. *See, e.g.*, Bernard Avishai, *Making the Desert Bloom*, N.Y. TIMES, Sept. 29, 1993, at A21.

31. About 25% of Israel's budget is devoted to education. Over 70% of employees have had at least 11 years of formal education. In 1985, almost 11% of the labor force held academic degrees. Refael Benvenisti, *Israel's Foreign Investment Policy*, *in* THE U.S.-ISRAEL FREE TRADE AREA AGREEMENT 26.07 (Andrew James Samet & Moshe Goldberg eds., 1989) [hereinafter U.S.-I FTAA].

32. In 1983, labor costs were significantly lower in Israel (average $4.78 per hour) than in the United States (average $12.26 per hour). *Id.* at 26.08.

33. "Thirty out of every thousand people are engineers or scientists, compared to 25 in the United States and 18 in Japan." Nathan Sharony, *Investing in Israel — A New Reality*, *in* ECONOMIC HORIZONS 1990–91, at 21 (1990) (published by American-Israel Chamber of Commerce and Industry, Inc.) (copy on file with the *Michigan Journal of International Law*) [hereinafter ECONOMIC HORIZONS].

34. Nearly 40% of Soviet immigrants have higher academic training, and an "unusually high number" of engineers, researchers, and architects are represented. Emanuel Genauer, *Economic Overview*, *in* ECONOMIC HORIZONS, *supra* note 33, at 16.

35. *See* Encouragement of Capital Investments Law 5719-1959 (Israel) (English translation published by A.G. Publications Ltd., Haifa, Israel (3d ed. 1992); Encouragement of Industry Law (Israel) (full Hebrew text reprinted in HOK I'DUD HASHKAOT HON, HOK I'DUD HATAASIA (Shlomo Peretz ed., 1992). *See generally* PANNELL KERR FORSTER (ISRAEL) LTD., NON-RESIDENTS GUIDE TO INVESTMENT AND TAXATION IN ISRAEL (1986) (copy on file with the *Michigan Journal of International Law*). In September 1990, the Law for Encouragement of Capital Investments was substantially amended to increase the incentives provided.

36. A 50% annual depreciation rate on new industry machinery and equipment is offered. FRY, *supra* note 19, at 197. Other provisions permit up to 400% accelerated depreciation rates for "approved enterprises." Tax holidays providing a full exemption from income tax on profits earned during a five- to twelve-year period are also possible for certain investments. *See, e.g.*, *id.*; MANUFACTURERS' ASSOCIATION OF ISRAEL, PROPOSALS FOR INVESTMENTS AND INDUSTRIAL COOPERATION IN ISRAEL (1990) (copy on file with the *Michigan Journal of International Law*); KESSELMAN & KESSELMAN, GUIDE TO UNITED STATES INVESTMENT IN ISRAEL 28 (1991) (Israeli C.P.A. firm publication; published in cooperation with Arnold & Porter, Washington, D.C.). Additional tax incentives are available for investment in oil

grants for investments in "developmental zones" and in fixed assets,[37] research and development grants,[38] guidance by government agencies, investment guarantees, and other subsidies.[39] Although bureaucracy dominates the atmosphere, the situation has improved since the government undertook an economic reform and privatization program.[40] Israel's Gross Domestic Product (GDP) grew from $36.7 billion in 1987 to $58.6 billion in 1991.[41] Shares in the twenty-eight Israeli companies most widely traded in the United States increased by an average of 150% in 1991.[42]

Arab countries also offer many attractive features. Some of the most expansive yet unexplored markets are found in the Arab world. Egypt, which craves investment and imports for its more than forty million inhabitants, has instituted an economic reform program.[43] Moreover, consumers in oil-rich nations, like Saudi Arabia and the United Arab Emirates, have a high spending power. Labor costs, which are one main determinant of enterprises' location decisions,[44] are extremely low, and

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exploration, film production, and the Eilat Free-Trade Zone — a free port area with investment incentives of its own. ISRAEL INCOME TAX COMMISSION, THE ISRAEL INVESTMENT HANDBOOK 7 (1989) (published by the Israel Investment Authority under the auspices of the Ministry of Finance of the State of Israel) (copy on file with the *Michigan Journal of International Law*) [hereinafter INVESTMENT HANDBOOK]. However, many tax benefits are neutralized by double taxation of U.S.-Israeli corporations, due to conflicts between tax codes. *See infra* text accompanying notes 88–94. This is an additional reason for the United States to enact the provisions here advanced — if not to encourage, then at least not to discourage investment in the Middle East.

37. Cash grants for up to 75% of investment in fixed assets are available. FRY, *supra* note 19, at 197.

38. Up to 50% subsidies of research and development costs "on approved export-oriented products" are available. *Id.* In addition, no value-added tax is imposed on exported goods. *Id.* Exporters can also benefit from government sponsored financing plans facilitating credit and loans by commercial banks, as well as from exchange rate insurance and political risk insurance through the government sponsored Israel Foreign Trade Risk Insurance Company. INVESTMENT HANDBOOK, *supra* note 36, at 16.

39. Training subsidies, low interest mortgages and loans, subsidized infrastructure costs in developmental zones, and low-cost leasing are also available in various cases. FRY, *supra* note 19, at 197.

40. Emanuel Genauer, *Economic Overview*, *in* ECONOMIC HORIZONS, *supra* note 33, at 19. In addition, the establishment of a "free export processing zone" — one that is liberated from taxes and bureaucratic regulations — has been approved in principle. *Israel, in Shift, Backs 'Free' Industrial Zone*, N.Y. TIMES, Jan. 12, 1993, at A11.

41. THE ROBINSON-HUMPHREY COMPANY, INC., INVESTING IN ISRAELI STOCKS: A MANAGED ISRAELI GROWTH PORTFOLIO (on file with the *Michigan Journal of International Law*) [hereinafter ROBINSON-HUMPHREY BROCHURE].

42. *Id.*

43. *See NBE: A Comprehensive Programme for Supporting Investors*, AL-AHRAM WKLY. (Cairo), Oct. 14–20, 1993, at 5 [hereinafter *Comprehensive Programme*].

44. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, INTERNATIONAL INVESTMENT AND MULTINATIONAL ENTERPRISES, INVESTMENT INCENTIVES AND DISIN-

labor is widely available. Many scarce natural resources, including oil, gas, and water (the most scarce resource in the Middle East), are available in Arab countries.

For his part, Lebanon's president, Elias Hrawi, a billionaire entrepreneur with an entourage of technocratic officials, has begun restoring investor confidence in Beirut's capital markets.[45] Palestinians also have much to offer: the highest level of education in the Arab Middle East;[46] an enviable historic track record of improvement despite many adversaries;[47] and stable public finance — no external debt and no over-bloated public sector.[48] Moreover, the PLO has proposed turning the Gaza District into an economic free zone.[49] A number of Arab countries, including Syria, have also enacted laws to encourage foreign investments, providing incentives similar to those offered by Israel.[50]

Combining Israeli and Arab comparative advantages with U.S. expertise and capital could yield a product greater than the sum of its parts. Together, Arabs, Israelis, and Americans may take advantage of economies of scale and economies of scope. Relatively untested markets are thirsty for development.

At the same time, a number of significant disadvantages loom in the Middle East.[51] Foremost is the risk of war, and the accompanying symptoms of exchange rate volatility, currency inconvertibility, and government instability. In the past, inflation has reached triple figures in Israel,

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CENTIVES AND THE INTERNATIONAL INVESTMENT PROCESS 39 (1983) [hereinafter OECD] (surveying investment incentive policies in OECD member countries).

45. Douglas Davis, *'Lebanon Will Recover with Peace'*, JERUSALEM POST, Nov. 18, 1993, at 14.

46. Peter Passel, *Economic Scene: The Palestinians May Now Have a Chance to Spur Their Economy*, N.Y. TIMES, Sept. 23, 1993, at D2 (stating that 2% of the population are college graduates).

47. *Id.* (stating that output per person nearly doubled in 20 years, even while witnessing 3% annual population growth).

48. *Id.*

49. *PLO Official Proposes Gaza Economic Free Zone*, JERUSALEM POST, Nov. 10, 1993, at 14.

50. Syria, for instance, passed a well-received investment encouragement law in 1991, exempting qualifying investors from certain taxes, customs duties, and regulations for five to nine years. *See, e.g.*, Robert S. Greenberger, *Desert Bloom? Syria Loosens Grip on Economy, Enjoys a Post-Soviet Bloom*, WALL ST. J. EUR., Jan. 6, 1994, at 1; *Comprehensive Programme*, *supra* note 43, at 5 (describing Egyptian measures to stimulate investment and creation of Investment Trustee Department by National Bank of Egypt); *Tunisia Issues New Investment Code; Complements Other Economic Reforms*, TOPICS (Overseas Private Investment Corporation), Winter 1988, at 5 (new economic reforms include repeal of investment preapproval requirements, sliding scale of tax and grant incentives, political liberalization, privatization of economy, tax treaty with United States, and accession to GATT).

51. *See generally* Benvenisti, *supra* note 31, at 26.16–26.17.

although it is currently under control.[52] Moreover, the Arab boycott of Israel creates significant hurdles for third parties who are caught between the boycott and U.S. laws forbidding compliance with the boycott. The lack of democracy in many Arab governments also means that peaceful transition cannot be ensured. The absence of an impartial judicial branch and a developed legal system in some Arab countries breeds uncertainty in the Arab markets. Furthermore, bureaucratic obstacles are frustratingly common, and the Middle East economies suffer from overregulation (in Israel) or overly rigid control (in many Arab countries). Last, the ever-present liabilities of any investment on foreign soil — cultural and language barriers, different business customs, dangers of expropriation and political instability — are magnified in the Middle East.

Joint ventures are an ideal medium of investment in the Middle East because they make it possible to minimize the above-mentioned risks and disadvantages, while maximizing the positive attributes of an investment.[53] A joint venture "contemplates a pooling of resources, a sharing of risks, a blending of areas of expertise and the creation of a common entity for the achievement of objectives that would be exceedingly difficult, if not impossible, for one of the joint venturers acting alone."[54] This is why OPIC encourages policy holders to enter into joint ventures and multilateralize as a means of reducing risk.[55] A joint venture allows the undertaking of speculative endeavors without exposing assets to unlimited liability.[56]

Joint ventures also benefit U.S. partners through the local expertise contributed by the native partners, which offsets the problem of investing in an unknown atmosphere. These joint ventures would also offer the benefit of having Israel at the crossroads between two continents, since it is the only country in the world that boasts free trade agreements with both the European Union[57] and the United

52. Inflation is currently around 10% a year, as compared to 330% in the early 1980s. ROBINSON-HUMPHREY BROCHURE, *supra* note 41. Inflation in 1993 is estimated to be at 11.5%. Jose Rosenfeld, *Economists Pleased with CPI's 0.8% Rise in November, Inflation Projected at 11.5% for the Year*, JERUSALEM POST, Dec. 16, 1993, at 9.

53. *See* FRY, *supra* note 19, at 70.

54. James A. Dobkin, *Negotiating International Technology Joint Ventures between American and Israeli Firms*, *in* U.S.-I FTAA, *supra* note 31, at 10.02.

55. BRENNGLASS, *supra* note 24, at 229.

56. Dobkin, *supra* note 54, at 10.03.

57. Israel has a number of trade agreements with the European Union, in particular the Free Trade and Cooperation Agreement of 1975, which has been followed by additional protocols. Yaacov Cohen, *Israel's Relations with the E.E.C. — Recent Developments*, INT'L ASSN. OF JEWISH LAW. & JURISTS, Nov. 6, 1992, at 1. The most important trade agreement,

States.[58] Thus, after a degree of local transformation, U.S. products could penetrate both Israeli and European markets duty-free, because the Israeli partner could provide access on competitive duty-free terms.[59]

Yet another reason for which joint ventures are an ideal medium for promoting Arab-Israeli interaction is that a joint venture can be structured so as to maintain equality — and thus equanimity — among its partners. Arab-Israeli cooperation must be rooted in equality: every joint venture must affirm that Arabs and Israelis are equals in order to heal yesterday's vanquisher-conquered relationship.[60] Qualifying joint ventures can and should be required to meet certain criteria that will ensure equal standing among Arabs and Israelis. The mechanics to ensure this are discussed in Part II.[61]

E. *Advantages of Investment Incentives as Foreign Policy Tools*

Investment incentives would be cost effective as well. Federal incentives to invest in targeted undertakings have an effect on companies' decisions.[62] Investment incentives work to offset existing risks and disincentives[63] in even more direct ways than joint ventures, since they act as direct subsidies for the targeted enterprises.

As early as 1958, a U.S. Department of Commerce survey indicated that one-half of the participants in an investment guarantee program had

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the Free Trade Area Agreement between Israel and the European Free Trade Area, signed on September 17, 1993 in Geneva, admitted Israel into the European Free Trade Area as of January 1, 1993. Just last December, the European Union promised to upgrade its trade agreement with Israel, opening its borders further to Israeli products and services. *EC Promises Israel a Better Trade Deal*, JERUSALEM POST, Dec. 2, 1993, at 14.

58. INVESTMENT HANDBOOK, *supra* note 36, at 6. *See also infra* text accompanying note 142.

59. Dobkin, *supra* note 54, at 10.01. *See generally* YEHUDA RAVEH & CO., FREE TRADE FROM EUROPE TO THE UNITED STATES OF AMERICA VIA ISRAEL (European ed. 1993).

60. Mona Qassem, *Prospects for a Regional Market*, AL-AHRAM WKLY. (Cairo), Nov. 4–10, 1993, at 4; *cf.* Shlomo Avineri, *Palestinians' Place in the Sun*, JERUSALEM POST, Dec. 3, 1993, at A4 (arguing that it is premature to interact economically initially, because existing disparities in economic power can cause friction).

61. *See infra* text accompanying note 87.

62. *See* OECD, *supra* note 44, at 233. The OECD study found that investment incentives have an effect, albeit a limited one, on investment decisions. *See id.* The main determinant of investment decisions was found to be "expected output." But incentives did have an integral and "direct impact" on timing, which is extremely important. *Id.* at 33–34. And incentives in this case would be crucial since they would open the doors to expansive markets and thus have an influence on the most important determinant, expected output. It is particularly important to jump start economic interaction among Arabs, Israelis, and Americans, since the full potential of growth through cooperation will only be achieved when barriers among the countries are broken.

63. *See* FRY, *supra* note 19, at 153.

"rested their decision [to participate] upon the availability of a guarantee."[64] And the success of programs like OPIC is evidenced by the number of applications and the systematic increase in participation, from $450 million in guarantees issued in 1959[65] to billions of dollars by 1983.[66] OPIC has prospered, as is reflected by the substantial reserves it has amassed: at the end of the 1991 fiscal year, OPIC reserves stood in excess of $1.6 billion.[67] It is estimated that programs like OPIC, the Export-Import Bank, and the Trade Development Program "facilitated almost $18 billion in U.S. exports last year, resulting in 360,000 American Jobs."[68] The Congressional Research Service has estimated that many successful investments in crucial sectors would not have been made had OPIC insurance not been available.[69]

From time to time, the United States has enacted incentives similar to the ones advanced in this article, although for different purposes.[70] Congress has approved programs to facilitate adjustment from excess capacity or international competition in the steel and textiles sectors; to provide ad hoc assistance to individual companies that play a significant role in certain areas of the U.S. economy; to promote research and development; to encourage job creation in zones plagued by high unemployment; to assist small business; and to rehabilitate factories, warehouses, and stores in urban areas.[71] Some of the most prominent federal agencies promoting economic development are the Department of Housing and Urban Development, which administers the Urban Development Action Grant Program; the Farmers Home Administration, an agency of the Department of Agriculture; and the Economic Development Administration, a unit of the Department of Commerce.[72]

Incentive programs are also widespread throughout the world.[73] Competition is so intense that investment incentives by governments

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64. BRENNGLASS, *supra* note 24, at 5, *citing* U.S. DEPARTMENT OF COMMERCE, RESPONSES TO BUSINESS QUESTIONNAIRE REGARDING PRIVATE INVESTMENT ABROAD 9 (1959).

65. BRENNGLASS, *supra* note 24, at 5, 11–12.

66. FRY, *supra* note 19, at 149.

67. OVERSEAS PRIVATE INVESTMENT CORPORATION, EXECUTIVE SUMMARY 2 (undated pamphlet, on file with the *Michigan Journal of International Law*) [hereinafter OPIC EXECUTIVE SUMMARY].

68. WHY FOREIGN AID?, *supra* note 29, at 2.

69. FRY, *supra* note 19, at 69. This includes up to 20% of U.S. private investment in the oil industry.

70. OECD, *supra* note 44, at 233–44.

71. *Id.* at 233.

72. *Id.* at 233, 243.

73. *See, e.g.*, *id.* at 18.

often "provide funding for 50 percent or more of the initial start-up expenses of an international enterprise and 10 percent or more of the costs of operating the business over a ten- to twenty-year period."[74]

Investment incentives that are aimed directly at corporations, such as tax incentives, are more efficient and cost effective than many other foreign policy outlays. "Providing tax incentives [is] more efficient than giving direct grants in foreign aid. Funds [go] directly toward investment, and [do] not pass through a bureaucratic intermediary. Eliminating the intermediary [reduces] the transaction costs and [abates] fears that the funds were being embezzled by corrupt officials."[75]

As it concerns insuring companies against political risk, OPIC was created under the belief that "stimulation of the flow of private capital would be less expensive for the U.S. government than direct government-to-government loans. . . ."[76] That belief was more than confirmed: OPIC has managed to carry out its mandate profitably. "The agency has recorded a positive net income for every year of operations, and has returned its initial start-up appropriation of $106 million to the U.S. Treasury."[77] During 1992, OPIC reported $180 million in profits.[78]

II. The Mechanics: How Would the Incentives Work?

This Part discusses the four types of incentives that could be administered to encourage investment in the Middle East. In the final two Sections, concerns common to all types are discussed.

A. *Tax Incentives*

The first provision suggested here, *tax incentives,* is the easiest to administer and enact. Tax incentives are highly attractive because they would immediately stimulate private investment without any bureaucratic hurdles. They may be structured in a number of different ways, including capital investment tax credits, increases in allowable deductions for capital investments, employee wage tax credits, or more

74. FRY, *supra* note 19, at 149.

75. Gregory C. Shaffer, *An Alternative to Unilateral Immigration Controls: Toward a Coordinated U.S.-Mexico Binational Approach*, 41 STAN. L. REV. 187, 228 (1988).

76. BRENNGLASS, *supra* note 24, at 1. A constant debate has reigned in the United States on whether OPIC should eventually be turned over to the private sector. *See id.* at 69–93. Many viewed privatization as harmful to OPIC's "developmental" mandate and to U.S. foreign policy in general. Thus, in 1978, Congress eliminated prior legislation that envisaged turning over OPIC to the private sector. *Id.* at 87.

77. OPIC EXECUTIVE SUMMARY, *supra* note 67, at 2.

78. Joshua Shuman, *OPIC Mission Bearing Fruits*, JERUSALEM POST, Oct. 29, 1992, at 4.

favorable tax rates on net income for qualifying joint ventures. The degree of incentive provided by these provisions could and should vary according to the level of interaction that a joint venture fosters. The more diverse the venture, the more rewards it should receive.

Setting a *preferential tax rate* is the most straightforward provision. If an enterprise met the conditions to qualify as a joint venture under this program, it would be eligible to be taxed at a lower rate. Suggested rates are set forth below, according to an equity mix table. This provision, like all tax incentives suggested here, would be automatic and self-administered.

Capital investment tax credits could also be granted to qualifying joint ventures according to an equity mix table, as set forth below. The idea of providing investment tax credits is not new. In the 1960s, the United States signed a treaty with Israel (and Brazil and Thailand) providing a 7% investment tax credit for investments therein, but Congress never ratified the treaty.[79] Capital investment tax credits seem to have a greater impact on investment decisions than other tax incentives,[80] although accelerated depreciation allowances can be structured to achieve the same incentive goals, depending on the rates, phase-outs, and reimbursability provisions used.

Accelerated depreciation allowances could be granted to enterprises that invest new funds in the region into qualifying joint ventures. Any purchase of capital, buildings, equipment, and depreciable land (i.e., land containing mineral deposits) could receive such treatment. The incentives would permit qualifying enterprises to depreciate their assets for tax purposes at rates a certain percentage higher than the ordinary rate of depreciation. Since depreciation would be front loaded to the early years, taxable income, and hence taxes, would be decreased in early years. To qualify for this treatment, the assets would have to be located in the Middle East and utilized by the eligible joint venture for a particular, preapproved joint project.

Employee wage tax credits (EWTCs) could provide a tax credit to the enterprise according to the number of workers employed. The *employee wage tax credit allowance* that each enterprise would receive would be a percentage of the cost of paying the wages (or the minimum wages) of all employees during their first five years of employment. Of course, wages and salaries are already deducted from income as business expenses. What the EWTC allowance does is to reward job creators by

79. *See* Miller, *Third World Views of Ends and Means of U.S. Tax Policy*, *in* UNITED STATES TAXATION AND DEVELOPING COUNTRIES 83, 91–102 (Robert Hellawell ed., 1980).

80. OECD, *supra* note 44, at 35.

permitting them to offset taxes owed by an additional percentage of the actual wages paid. (The EWTC could also be structured as a deduction rather than a credit.)

Under a slightly less generous alternative, the EWTC would be based on a percentage of the current minimum wage for each new employee hired, rather than on the total actual wages paid out.[81] Limiting the allowable credit to a set minimum wage, even if the employee is paid more than the minimum wage, serves to put a cap on the total allowable credit.[82] This measure could be important not just because it decreases the amount of tax revenues that the government is giving up, but also because it ensures that no incentive is created to raise employees' wages above efficient market wages.

EWTC allowances have been used frequently at the federal and state levels to fuel employment. The state of California has such a program for Enterprise Zones,[83] and has further passed an urgency statute to revitalize areas that suffered from the 1992 Los Angeles riots.[84] Approximately eighteen months ago, some Democrats in Congress circulated a plan to establish Enterprise Zones that would offer a "Targeted Jobs Tax Credit,"[85] and Puerto Rico has been lobbying Congress for a similar program.[86]

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81. For an example of where this is done, see CAL. REV. & TAX. CODE § 23625(b) (Deering 1988) (providing hiring credit at percentage of "qualified wages," which are defined as "that portion of hourly wages which does not exceed 150 percent of the minimum wage").

82. Yet another method of gradually scaling back the incentives and their costs is to offer a decreasing percentage of the deductible basis as time elapses. For example, for employees hired within the first six months, grant 100% of the deduction; for employees hired over six months ago, but less than 12 months ago, provide 75% of the deduction; for employees hired over 12 months ago, grant a 50% deduction, and so on. *See, e.g.*, CAL. REV. & TAX. CODE § 23625(a) (Deering 1988).

83. *See id.* §§ 17053.8–17053.10, 17053.17, 23622, 23623.5, 23625 (Deering 1988, Supp. 1993, & Midyear supp. 1993); Enterprise Zone Designation Process, CAL. CODE REGS. tit. 10, § 5600 (1993); Employment and Economic Incentive Act, CAL. CODE REGS. tit. 2, § 1896.70 (1993).

84. *See* Los Angeles Revitalization Zone, CAL. GOV'T CODE § 7100 (Deering 1988, Supp. 1993 & Midyear supp. 1993) (providing tax benefits for businesses located in low employment zones, including income tax credits for a portion of wages paid to previously unemployed residents, tax credits for sales taxes paid on purchased equipment, and 100% carryforward of net operating losses); *see also* Legislative Counsel's Digest, Cal. Assembly Bill AB 38, May 14, 1992; Legislative Counsel's Digest, Cal. Assembly Bill AB 38X *as amended*, August 31, 1992. Nonetheless, the legislation provoked significant debate. For example, the Legislative Counsel commented that "[t]he proposal . . . is unprecedented. The state would essentially pay the salary of any worker, up to 150% of minimum wage, for construction businesses operating within the zone. Some question the fiscal prudence of such a large subsidy of a private economic activity." *Id.* at 5 cmt. 2.

85. *See, e.g.*, 138 CONG. REC. S9,664-69 (daily ed. July 2, 1992). The proposal also included Community Development Block Grants. *Id.* at S9,699.

86. Actually, Puerto Rico currently benefits from a yet more generous program. However, a movement to repeal § 936, which provides the pertinent credits, has prompted

EWTCs are particularly advantageous because of their dynamic incentives: they keep up with higher employment and encourage growth. Thus, EWTCs would stimulate additional investment in U.S.-Arab-Israeli joint ventures and increase economic activity in the region. Additional employment is extremely valuable in itself, because individuals who attain job and economic security will have a stake in the system and will want to preserve stability. Thus, disenfranchised individuals who get jobs through this program can themselves become guardians of coexistence. To encourage and reward growth in the pool of employees, the enterprise could obtain tax credits set according to a formula that takes into consideration both the level of growth and the proportion of Arab and Israeli workers in each sector of the enterprise. The specific formula is set forth below.

Since the objective of the legislation is to encourage interaction among Arabs, Israelis, and U.S. citizens at all levels, the tax advantages should be scaled according to the level of interaction, the type of interaction, and the composition of the enterprise. Two measures could gauge the venture's success in attaining a "good mix" and could determine how favorable a treatment should thus be accorded.

The first standard, *equity mix*, would be a measure of the equity share of each of the three groups of participants (see Table 1). It would be the standard utilized to assess the allowable capital investment tax credits, accelerated depreciation allowances, or preferential tax rates. The ideal equity mix would be for each of the three groups to have a substantially equal share of no less than 30% and no more than 35% of the same class and type of shares. These enterprises would qualify as Type A Joint Ventures. This would mean that the Arab, U.S., and Israeli groups of shareholders would all be on equal footing and have the same rights. Presumably, they would have equal representation on the board of directors and would all have a say in the election of officers. (It seems too burdensome to impose additional requirements on the composition of the management and the directorate, but that would also be a possibility.) Type A Joint Ventures would be eligible for a capital investment tax credit of 10% per annum, for a 15% preferential tax rate, and/or for a 50% accelerated depreciation deduction for the first five years.[87] (Note that the legislator can choose whether to enact all, some, or none of the tax provisions. They are not dependent on one another.)

some to request that at least some tax credit based on actual wages be provided. *See Tax Proposal For Puerto Rico*, N.Y. TIMES, Feb. 16, 1993, at D7.

87. This would be in addition to any accelerated depreciation allowance already available for other reasons. The set percentage would reflect the extra portion of asset value that could be depreciated, stated as a percentage of the ordinary rate of depreciation. The specific formula for the entire term of depreciation would depend on technical considerations.

The second category would be Type B Joint Ventures, which would consist of enterprises in which no group has less than 20% of the shares and no group has more than 49% of the shares. This would mean that the group holding the greatest number of shares would still need the consent of at least some members of another group in order to take actions requiring an absolute majority vote. Type B Joint Ventures would be eligible for a capital investment tax credit of 7% per annum, for a 20% preferential tax rate, and/or for a 30% accelerated depreciation reduction for the first five years.

The third category, Type C Joint Ventures, would consist of enterprises in which no group has less than 20% of the shares and no group has more than 60% of the shares in the enterprise. The 20% minimum requirement is designed to ensure that no tax concessions are granted when a group purchases only a very small share of equity in order technically to satisfy the law and to derive the benefits therefrom. Although the holder of the majority of shares of a Type C Joint Venture could make day-to-day decisions requiring a majority vote, it would require the consent of at least one of the other groups (and perhaps both, depending on the level of consent required by the firm's bylaws) before making a decision requiring a supermajority vote (generally, a vote requiring 80% or 90% in favor). Type C Joint Ventures would be eligible for a capital investment tax credit of 5% per annum, for a 25% preferential tax rate, and/or for a 20% accelerated depreciation reduction for the first five years.

The second standard that could be utilized, *labor mix*, would be a measure of the mix of all workers in the enterprise (see Table 2). This test seems most appropriate to determine the adequate level of EWTCs that each qualifying joint venture should receive. In this case, the number of U.S. laborers would not be as important as ensuring that Arabs and Israelis are represented on a balanced level in all tiers of employment. Thus, the test would consist of finding the percentage or fraction of Arab and Israeli entry-level laborers, the percentage or fraction of Arab and Israeli mid-level office workers, and the percentage or fraction of Arab and Israeli professionals or white collar workers in the business. It would be dangerous and probably harmful to the work environment, and to relations among Arabs and Israelis, if a disproportionate number of Arabs were entry-level laborers while Israelis held a disproportionate number of the management positions, and vice versa. Therefore, the test should be sensitive to significant differences in the composition of any of the areas of work, while tolerating only small digressions. The following equation would achieve the desired goal:

$$\textit{Index} = 100/7500\ [(A - 50)^2 + (B - 50)^2 + (C - 50)^2]$$
$$\textit{Labor Mix} = \text{EWTC Allowance} = 100 - \text{Index}$$

where A is the percentage of laborers held by the group constituting the majority of laborers; B is the percentage of office workers held by the group constituting the majority of office workers; and C is the percentage of management held by the group constituting the majority in management.

The Index would be subtracted from 100, and the resulting number, reflecting the labor mix, would become the EWTC allowance, stated as a percentage of the employees' wages (or alternative minimum wages) that the specific enterprise would be eligible to claim as an offset against its income taxes.

This formula is only illustrative. Under its current form, the average credit that would result from it is probably too high. Of course, the formula could and should be adjusted by policymakers to reflect the exact amount of credits that policymakers deem warranted. This could be done by multiplying the resulting EWTC allowance by a fraction set by the policymakers (e.g., 1/4).

An example should highlight the sensibility of this equation. If Arab workers in an enterprise accounted for 63.33% of the total labor in each of the three tiers, the following equation would apply:

$$\textit{Index} = 100/7500\ [(63.33 - 50)^2 + (63.33 - 50)^2 + (63.33 - 50)^2]$$

The Index would be 7.1. The EWTC allowance would be 100 - 7.1 = 92.9. This means that this corporation would be allowed to offset from its taxes 92.9% of the total wages (or alternative minimum wages) that it paid out during the year for each new employee hired. (As mentioned above, this amount would actually be lower after being multiplied by a set fraction, i.e., 92.9 x 1/4 = 23.22).

In contrast, an enterprise in which Arabs and Israelis each accounted for 50% of management and 50% of office workers, but where 90% of the laborers were Arab, would fare much worse. Its Index would be 21.33, and its permitted EWTC allowance deduction would be 78.67%. A linear equation would have treated both of the examples above identically, since the total digression from a 50% balance equals forty in both examples ([(90 - 50) + (50 - 50) + (50 - 50)] = 40; [(63.33 - 50) + (63.33- 50) + (63.33- 50)] = 40). However, our equation underlines big differences and understates small ones. This result is desirable because harm would be more likely to occur in highly disproportionate environments, even if only disproportionate at one level, than in working environments where small digressions are observable at every stage but overall equality is retained. Note that enterprises in which one group was represented purely in menial labor while another group controlled management would be granted a zero EWTC allowance (i.e., each "majority" group would hold 100% of the positions at its level).

Israel and certain Arab countries already provide very generous tax treatment for foreign direct investment,[88] but the benefit to many U.S. companies is limited or nonexistent because, under the current system of double taxation,[89] U.S. taxes absorb part or all of the benefit that would otherwise inure to the multinationals. To the extent that Israeli or Arab taxes are greater than U.S. taxes, such excess is avoided by Israeli or Arab tax credits; but to the extent that Israeli or Arab taxes are equal to or less than U.S. taxes, the effect of any Israeli or Arab concessions is neutralized by increased U.S. taxes.[90] If U.S. taxes were lowered, as under this proposal, then Israeli and Arab incentives would function properly and would not be offset by U.S. taxation.[91]

Inversely, tax incentives offered by the U.S. government work only if they are not counteracted by Israeli or Arab government taxes.[92] If an amount that goes untaxed by the United States is fully or partially taxed by another government, the benefit to the enterprise is limited or nonexistent and the only effect is that the United States ends up ceding taxation revenues to other countries. Thus Congress could require, as a condition of participation in this program, that any government that wants these incentives to be provided by the United States for investment in its country would have to pass laws that accorded similar

88. *See supra* text accompanying notes 35–36, 50.

89. Gideon Klugman, *Income Tax Considerations Related to the Free Trade Agreement between the United States and Israel*, *in* U.S.-I FTAA, *supra* note 31, at 14.01-14.02. A treaty that would reconcile these differences, the United States-Israel Income Tax Treaty, is pending approval by the U.S. Senate Foreign Affairs Committee, as well as Senate ratification. Jose Rosenfeld, *US Delays Approving Taxation Treaty with Israel*, JERUSALEM POST, Nov. 22, 1993, at 8.

90. On problems of double taxation in general, see Klugman, *supra* note 89, at 14.02.

91. Tax treaties with Israel and Egypt that were apparently never ratified would have done precisely this: the United States would have extended tax sparing to tax reductions granted under Israeli or Egyptian investment incentive laws. Matthew J. Kust, *Tax Treaties with Underindustrialized Countries*, *in* LEGAL PROBLEMS IN INTERNATIONAL TRADE AND INVESTMENT 197, 208–209 (Crawford Shaw ed., 1962).

92. *Cf.* Shaffer, *supra* note 75, at 200–201, 227 (explaining how Mexican incentives may be neutralized and rendered ineffective by U.S. taxation and U.S. countervailing duties).

TABLE 1 — TAX CREDITS BASED ON EQUITY MIX

Type of Joint Venture	Type A Joint Venture	Type B Joint Venture	Type C Joint Venture
Capital Investment Tax Credit	10%	7%	5%
Preferential Tax Rate	15%	20%	25%
Accelerated Depreciation Reduction	50%	30%	20%

TABLE 2 — SAMPLE EMPLOYEE WAGE TAX CREDITS BASED ON LABOR MIX*†

Percentage of Majority Laborers	Percentage of Majority Office Workers	Percentage of Majority in Management	Index	Employee Wage Tax Credit Allowance
100	100	100	100	0%
90	90	90	64	36%
80	80	80	36	64%
50	50	50	0	100%
90	50	50	21.33	78.67%
63.33	63.33	63.33	7.10	92.90%

* Note that the numbers in Table 2 may seem very large and generous. However, they could be reduced, as explained above, by multiplying every EWTC allowance by an across-the-board set fraction. In addition, the "alternative minimum wage" limitation would significantly reduce the net allowable deductions.

† One could be misled into thinking that the numbers may be overstated because they do not take into account U.S. participation. But the EWTC allowance formula is expressly intended to ignore U.S. participation; U.S. participation does not affect the equation. For purposes of this equation, the "whole" from which the share of the work force is calculated includes only Arabs and Israelis, as explained above. If the number of U.S. workers were allowed to affect the equation, it could create an incentive against hiring U.S. workers in the joint ventures, because increased U.S. participation would decrease the "majority's" share.

treatment to qualifying joint ventures. This would mean, in effect, that tax and investment policies would be coordinated at a trinational or multinational level. Some commentators have insisted that harmonization and reconciliation of foreign tax credit provisions is a prerequisite to a successful program.[93] A coordinated tax agreement would also be superior because it would harmonize conflicting concepts of taxable income, divergent definitions of "individual" as well as "corporate" residency, and different rules on source of income determinations.[94] Otherwise, double taxation will nullify any U.S. tax incentives.

B. *Government Investment Guarantees and Government Investment Grants*

The second type of incentives advanced in this legislation proposal are *government investment guarantees* and *government investment grants*. Government investment guarantees are commitments by the government to back a private investment and to compensate a third party lender if the investment is lost for political (or other) reasons. They serve primarily to assuage the lender's fears that the party seeking private loans may default. The company's loss does not translate into automatic forfeiture because redress can be sought from the government, which is the guarantor of last resort. Since the government investment guarantees decrease the risk of nonpayment by the joint venture, third parties are more willing to lend to these enterprises, and at a lower interest rate. A qualifying enterprise could receive government investment guarantees according to some set formula that increased directly as the amount of total investments grew, whether the investments were in tangible or in intangible property.

In contrast, government investment grants are more direct outlays of federal funds than government investment guarantees. They serve to subsidize certain projects that will benefit the granting nation in direct and substantial ways. The government investment grants would act as direct subsidies to compensate for the risks undertaken by U.S. companies, and to reflect government acknowledgment that those pioneering investments help U.S. businesses in general. A qualifying enterprise could receive nontaxable government investment grants according to some set formula that increased directly as the amount of investments in tangible fixed assets grew.[95] For example, government investment grants

93. *See, e.g.*, *id.* at 227.

94. *See, e.g.*, Klugman, *supra* note 89, at 14.02–14.09 (United States taxes on worldwide income basis, whereas Israel taxes based on territorial system); KESSELMAN & KESSELMAN, *supra* note 36, at 52; Shaffer, *supra* note 75, at 228 n.283.

95. Ordinarily, government grants are only awarded with respect to acquisition of

could be awarded as a percentage of the cost of physical assets acquired by a company.

OPIC is an independent U.S. government agency that offers medium- to long-term financing for overseas investment projects encompassing significant U.S. equity and management participation.[96] It conducts the national investment guarantee program and occasionally (although rarely) awards grants to enterprises whose investments advance the interests of the United States.[97] It also provides political risk insurance. OPIC's project financing takes account of the economic, technical, marketing, and financial soundness of an investment.[98] For example, it requires that there be an adequate cash flow and, in general, that the project be financially and commercially viable.[99] OPIC "does *not* offer concessional terms usually associated with government-to-government lending . . . ;"[100] in other words, OPIC claims that it will not provide subsidized rates. It will not participate in projects that adversely impact the U.S. economy or employment situation in a significant way:[101] "OPIC will not support a runaway plant. . . ."[102]

OPIC's purpose is to further U.S. foreign policy and to enable U.S. companies to compete with foreign rivals. Congress authorizes the secretary of state to determine which countries are covered, as well as the breadth of coverage. Direct loans generally range from $500,000 to $6 million, while loan guarantees range from $2 million to $50 million.[103] As of November 1992, OPIC programs are available in 138 countries, including the following Middle Eastern and North African countries: Algeria, Bahrain, Egypt, Israel, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Tunisia, the United Arab Emirates, and Yemen.[104] In addition, in 1992, OPIC created an Israel

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tangible assets, since such substantial and direct subsidies require a stronger commitment and risk by the private investor, arguably denoted by an investment in physical assets. Guarantees, in contrast, are more freely awarded. *See, e.g.*, KESSELMAN & KESSELMAN, *supra* note 36, at 30.

96. OVERSEAS PRIVATE INVESTMENT CORPORATION, INVESTMENT FINANCE 1–2 (undated pamphlet, on file with the *Michigan Journal of International Law*) [hereinafter OPIC INVESTMENT FINANCE]. The U.S. beneficiaries must own at least 25% of the equity. *Id.* Preferably, at least 51% of the venture should be held by privately owned firms or persons. *Id.*

97. On very selective cases, OPIC will also provide permanent capital through capital stock acquisitions, thereby agreeing to become an equity partner. But equity participation is rare and is currently not offered in the Middle East. *Id.* at 10–12.

98. *Id.* at 2.

99. *Id.* at 2–3.

100. *Id.* at 2 (emphasis added).

101. *Id.* at 4; *see also infra* text accompanying note 195.

102. OPIC INVESTMENT FINANCE, *supra* note 96, at 4.

103. *Id.* at 8.

104. OVERSEAS PRIVATE INVESTMENT CORPORATION, COUNTRY AND AREA LIST (Nov.

Growth Fund.[105] Moreover, OPIC has slated $100 million over the next two years for West Bank and Gaza Strip projects pursuant to Secretary of State Warren Christopher's commitment.[106] The loan guarantee and grant measures proposed in this article could be administered by OPIC without significant difficulty.[107]

C. *Government Investment Insurance*

Government investment insurance consists of "insurance contracts under which the United States agrees to insure private investors against losses arising from certain political and economic risks."[108] A policy can cover losses due to political risk, currency inconvertibility, war (broadly defined as including insurrection, revolution, and civil strife), or expropriation (including confiscation and nationalization).[109] The insurance could protect assets, expected business income, or both.[110]

A government-backed insurance provider would fare much better than a private insurer for two reasons. First, and most important, it can exert influence on host governments to ensure that its interests (the aggregation of all of the private business interests it insures) are protected and respected. It can utilize its political, economic, and military power to persuade foreign countries to abide by free market rules. Second, it can take advantage of economies of scale and scope, representing multiple enterprises at the same time as it advances its agenda.

As a condition of providing this insurance coverage, perhaps at a subsidized rate, the government agency could require that the underlying investment contract include a dispute settlement procedure, that the rights of the enterprise be subrogated to the government's rights if insurance is paid out, and that the insured comply with all of its

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1992) (sheet published by OPIC; copy on file with the *Michigan Journal of International Law*).

105. *See* Shuman, *supra* note 78.

106. *See infra* text accompanying note 157.

107. *See infra* text accompanying note 156.

108. BRENNGLASS, *supra* note 24, at x.

109. Currency inconvertibility coverage generally compensates investors who cannot convert their funds because stringent foreign exchange restrictions are enacted in new regulations or are de facto enforced. But this type of coverage does not generally insure parties against devaluation. OVERSEAS PRIVATE INVESTMENT CORPORATION, INVESTMENT INSURANCE 3–4 (undated pamphlet, on file with the *Michigan Journal of International Law*) [hereinafter OPIC INVESTMENT INSURANCE]. However, standard futures and forward contracts in the private sector can insure against this contingency.

110. OPIC offers both types of coverage: Assets Coverage, which compensates for damage to property, and Business Income Coverage, which covers income losses resulting from damage caused by political violence. *Id.* at 4–5.

contractual obligations.[111] The investments would have to be in new projects, or in expansions or modernizations. Other requirements could also be set out.[112]

OPIC currently administers a program of risk reduction to encourage and enable U.S. entities to invest abroad. It helps finance the risks of investing abroad. "Insurance is available for new ventures or expansions of existing enterprises, and can cover equity investments, loans, technical assistance agreements, leases and other long-term exposures."[113] OPIC contends that its services are priced at market (not subsidized) rates, and that it conducts its "financing operations on a self-sustaining basis" and with "due regard to principles of risk management."[114] Israeli-sponsored companies, as well as commercial companies, also offer certain types of political risk insurance,[115] but they do not cover all contingencies and the policies are not subsidized.

OPIC is well-suited to administer the government investment insurance incentives proposed here. However, some changes would have to be made to its guidelines in order to accommodate this specific provision. For example, currently OPIC may only insure investors who are (1) citizens of the United States; (2) corporations, partnerships, or entities created under U.S. laws and which are beneficially owned by the United States (i.e. over 50% of each class of stock must be owned by U.S. citizens); or (3) foreign businesses at least 95% owned by investors eligible under (1) or (2) above.[116] Arguably, U.S. "investors" who form part of a joint venture would be eligible for insurance under these criteria,[117] but the joint venture itself, as a whole, would not. In order to make the joint venture itself eligible, an express exception for this investment vehicle would probably have to be added to the OPIC rules.[118] In addition, the U.S. government would have to consider whether it is worthwhile to provide subsidized rates to encourage pioneering investments in these endeavors.

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111. *See, e.g.*, *id.* at 10–11, 14.

112. *See infra* text accompanying notes 124–28.

113. OPIC INVESTMENT INSURANCE, *supra* note 109, at 2.

114. BRENNGLASS, *supra* note 24, at xi.

115. *See* INVESTMENT HANDBOOK, *supra* note 36, at 16; *see also* Joshua Shuman, *Dutch Firm Decides to Enter Local Trade Risk Insurance Field*, JERUSALEM POST, Nov. 15, 1993, at 8.

116. OPIC INVESTMENT INSURANCE, *supra* note 109, at 14.

117. *See id.* at 15 ("There is no requirement that the foreign enterprise be owned or controlled by U.S. investors. However, in the case of a project with foreign ownership, only the portion of the investment made by the U.S. investor is insured by OPIC. Insurance will not normally be available for investments in enterprises majority-owned and controlled by a foreign government.").

118. *See infra* part III.

D. *Middle East Investment Agency*

The fourth idea that would facilitate joint ventures between U.S., Israeli, and Arab companies or individuals is the creation of a *Middle East investment agency*. The Middle East investment agency would promote economic interaction among Arabs, Israelis, and foreign investors by (1) providing vital but scarce information on cultural, legal, economic, religious, and political differences in Middle Eastern countries; (2) supplying information about business opportunities and overtures; (3) helping private companies decipher the maze of U.S. and Middle Eastern country regulations (many of which already provide certain incentives for investment in Israel and Egypt); (4) guiding companies through bureaucratic processes; and (5) in general, pointing to the advantages of joint ventures with Israel and its Arab neighbors.[119] The agency would not only help expedite and ease the immersion of foreign enterprises into a new business environment; it would also take an active role in promoting and nurturing such ventures.

The Middle East investment agency could be a government agency, created by a legislative act and funded by the federal government, or it could be a quasi-governmental body, created by Congress but given free reign in the private sector and a mandate to become self-sufficient by its fifth year of operations. The investment agency would be lightly staffed by specialists with experience trading in the Middle East. Its guidance on general business matters would be complemented by legal advice and information on the foreign investment, trade, tax, technology, foreign ownership, and joint venture laws of each country.

A main office could be opened in the United States, with liaisons in Tel Aviv or another Israeli city, in Cairo, and, if possible, in Jericho, Amman, Damascus, Beirut, Riyadh, Kuwait City, and Rabat. Guides about each participating country would be published in English, detailing the country's relevant laws, cultural and religious characteristics,

119. The government of Israel has created two agencies to encourage foreign direct investments in Israel. The Investors Consulting Service, part of the Industrial Development Bank of Israel, tries to solve bureaucratic problems and to provide general information, economic statistics, guidance, and counseling, including free feasibility studies. THE INVESTMENT CENTER, INCENTIVES TO APPROVED PROJECTS 8 (Oct. 1990) (copy on file with the *Michigan Journal of International Law*). The Investment Authority, which operates abroad through Economic Representatives of the Israeli government, promotes industrial projects and investments in Israel, as well as agreements for the protection of foreign investors. *Id.* Although the objectives of these agencies are substantially more narrow than those envisaged by the legislation proposed in this article, their structure and organization could serve as a model for the Middle East investment agency, and coordination with them could avoid duplication of efforts.

political developments, and helpful administrative agencies.[120] The investment agency would maintain close contact with its government liaisons and would often request that administrative procedures be expedited. A number of experts in different fields would probably work as consultants on a pro bono basis and could eventually be hired on a permanent basis. Companies or individuals interested in investing in joint ventures with Arab and Israeli partners would be able to receive consulting services and advice about their plans.[121] A dispute settlement mechanism could be set in place for the resolution of disagreements through mediation or arbitration on a voluntary basis.

Research as to investment opportunities in each country, as well as to the specific needs and strengths (comparative advantages) of each country, would be conducted on an ongoing basis. Findings would be published through media and marketing sources and through direct contact with potential investment sources. Meetings, symposia, and trade shows could be organized in various cities to encourage interaction among business leaders from the Middle East and the United States, and to enable potential investors to find suitable and profitable ventures.[122] The investment agency could search for creative business plans suggesting ways in which Israel, Arab countries, and the United States could join in their efforts to create a socially and economically beneficial venture, business or academic, scientific-based or not. A competition could be organized, with the best joint venture plans receiving an award. Sponsors for the plan would then be sought within the network of potential investors.

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120. As part of its Investor Service, OPIC currently offers "kits" published by the Investor Information Service, a publishing clearinghouse. These provide information about a country's (or a set of countries') business, economic, political, and social climate. *See* OVERSEAS PRIVATE INVESTMENT CORPORATION, INVESTOR SERVICES 5 (undated pamphlet, on file with the *Michigan Journal of International Law*) [hereinafter OPIC INVESTOR SERVICES]. These information kits can serve as a basic model for the Middle East investment agency's publications, but the guides envisioned in this article would have to be much more detailed: they would analyze all applicable U.S. and host country laws.

121. The Investor Services branch of OPIC also offers fee-based "Advisory Services" that include assistance with business planning, joint venture partner identification, and feasibility evaluations. It can even help by trying to secure legal and investment information from other sources. But the Investor Services are very general in scope and thus sacrifice specificity and in-depth specialization. They emphasize general business strategy, but generally lack any expertise on the Middle East. They also lack up-to-date information on specific business needs and opportunities. *See id.* at 2.

122. OPIC occasionally sponsors "Investment Missions" to various countries or regions. *See id.* at 2–3. Although the Missions are seldom conducted in the Middle East (as far as could be ascertained, no Missions to any country in the Middle East were scheduled for 1993, *see* Overseas Private Investment Corporation, *OPIC Poised to Start 1993 with Full Missions Schedule, OPIC Investment Missions Update* (Nov. 1992) (flyer/newsletter, on file with the *Michigan Journal of International Law*)), these provide an excellent example of how the Middle East investment agency could go about introducing potential investors to possible joint venture projects.

E. *Eligibility*

There are several options regarding the types of companies and individuals eligible for these incentives. For ease of reference, this article refers to joint ventures of U.S. companies with Arab and Israeli companies. The actual legislation would probably not require the existence of an Israeli or Arab corporation. The U.S. company could be structured in any way — as a sole proprietor, an interested investor, a partnership, a cooperative society, or a corporation (though the structure or composition of the company *could* have an effect on the substantive provisions that determine the degree of available incentives). Rather, what would be required is that the U.S. entity take advantage of certain factors of production in both Israel and some Arab country or in the occupied territories. The recipient of government investment grants or guarantees or of tax incentives could be any U.S. citizen, corporation, association, or partnership "substantially beneficially owned by United States citizens, as well as any wholly owned foreign subsidiary of any such corporation."[123] Fifty percent ownership should qualify as substantial ownership. The emphasis would be on substance rather than on legal definitions. The joint venture would not necessarily have to be a "separate legal entity" in the strict sense of the term. For example, a U.S. company could contribute its own capital, use Arab labor and management and Arab raw materials, and employ Israeli technology and scientists. If a minimum mix of Israeli and Arab cooperation were met, the U.S. enterprise's operations could qualify for these programs, with the benefits awarded varying according to the degree of interaction discussed above.

Similarly, the "Arab and Israeli" requirement would be flexible. For purposes of this program, a venture among Americans, Israeli Jews, and Israeli Arabs would be eligible for these measures, as would a venture among Americans, Israelis, and Palestinians living in the occupied territories. So long as the objective of interaction between Arabs and Israelis was met, the incentives would be available, and the investment agency would be willing to lend its support.

F. *Safety Mechanisms*

To ensure the smooth operation of the program and the achievement of congressional objectives, a number of safety mechanisms and conditions would have to be put in place. The U.S. legislation would have to overcome the danger of causing a simple trade diversion without real

123. Terminology borrowed from statutes cited in BRENNGLASS, *supra* note 24, at 9.

job creation. Attention must be paid to ensure that U.S. companies which benefit from this new legislation are truly investing in ventures with Israeli and Arab partners and are not just using the corporation as a store front to derive the benefits of the U.S.-Israeli Free Trade Area Agreement — and of the incentives proposed in this article — by funneling products from other countries through Israel. Thus, incentives could be restricted to fields where interaction will necessarily occur, i.e., in manufacturing, research and development, or other elaborate processes. Mere exportation of products, without more, could be deemed not to qualify for these measures. Additionally, a minimum percentage of national factors of production could be required even for companies that meet the equity mix test.

Another consideration is that some businesses that planned to invest in certain schemes anyway will get a windfall. There seems to be no effective way to prevent this; even requiring that eligible investments be "new" would not eliminate this danger. But given the current paucity of joint ventures among Arabs, Israelis, and U.S. citizens, this is not a major concern.

Some believe that the competitive atmosphere in the commercial arena will only increase friction and tensions among Israelis and Arabs, particularly if Israelis are seen as oppressive employers and Palestinians continue to be hired only for menial positions. This problem may already have been solved by the equity mix requirements set forth above, but more stringent provisions or preapproval requirements could also be added. Preapproval of a company's plan by an agency would be burdensome and costly, but the agency could monitor against abuse and could be granted the discretion to deny funding to ventures that are more prone to cause, rather than alleviate, tension. The agency could also be required to ascertain whether the venture will be a good influence on the peace process and whether it will further, or at least not undermine, the strategic interests of the United States.

In order to minimize the costs of the investment guarantee and grant incentives, the granting agency could be required to ascertain that the firm has a realistic chance of success. Current law mandates that OPIC manage and minimize risks; several risk-minimization techniques are already practiced by OPIC[124] and seem to be working. Additional performance and review requirements could be imposed, and a recommendation by an industrial development bank or by another objective third party could be a prerequisite.

Fraud and abuse will have to be prevented through stringent measures, many of which are already available under the OPIC enabling acts

124. *Id.* at 217–60.

and under the U.S. Internal Revenue Code. Additional mechanisms would have to be added to prevent employers from hiring and then firing employees, or from investing and then withdrawing funds for the sake of receiving a tax reduction.[125] For example, employees whose wages are partly deducted by the joint venture would have to be employed for a set minimum period.[126] Furthermore, restrictions on the permissible payment of dividends to shareholders could be imposed.[127]

In addition, restrictions on the ability to repatriate funds or to withdraw them from an investment could be imposed on participating enterprises. This measure could be administered on an *ex post facto* basis (i.e., if a company or individual has benefitted, it shall not repatriate or withdraw capital (or even profits) until five years from the date of the initial investment) or on an *ex ante* basis (i.e., if a company or individual wishes to benefit, it may not repatriate or withdraw capital until five years after the date of the benefit, or alternatively, after the date of the initial investment). Care would have to be taken to ensure that these provisions did not conflict with other incentives, such as currency inconvertibility insurance, which ensure repatriation. Exceptions could potentially be allowed for extraneous circumstances or major business exigencies forcing the investor to pull back, provided that good faith is shown. Exceptions could also be made for mere shifts of capital from one investment to another qualifying one, or for reorganizations as opposed to full withdrawals.

The United States could also consider requiring cooperation by the other Middle East governments before implementing the statute. Each government could be requested to cooperate with the investment agency in exchange for the willingness of the agency to promote foreign investment in, and development of, its country. A mechanism for speedy review of complaints or concerns about bureaucratic impediments and obstacles could be set up. A government official could be appointed to serve as a liaison between government agencies and the investment agency. The liaison should be a senior level official or, at the very least, a junior official with sufficient influence and authority over the government's trade and investment agencies. The endorsement of these

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125. *See, e.g., Change in Capital Investments Encouragement Law Proposed*, JERUSALEM POST, Dec. 10, 1993, at A9 (announcing possible amendment to Israeli law that would prevent firms that close plants from receiving assistance from the State for five years).

126. The Archie-Hudson Bill, for instance, requires that employees be employed for at least 270 days, with some exceptions. *See* Los Angeles Revitalization Zone, *supra* note 84, § 23625(h)(1), (2).

127. This type of "anti-abuse" restriction is imposed by the Investment Center, the Israeli agency that administers investment incentive programs, on all approved projects. KESSELMAN & KESSELMAN, *supra* note 36, at 33.

programs by host governments would be important because it would assuage the fears of private investors, who would otherwise be apprehensive about approaching Israel without official sanction from their governments.[128]

Someday, the concepts herein could be globalized. An international guarantee institution could administer a multilateral investment program that promoted joint ventures among Arabs, Israelis, and any third party.[129] This globalization would further the peace-seeking objectives of this program by increasing the potential for Arab-Israeli interaction, even though it would dilute the competitive advantage that would arguably result from encouraging U.S. companies to be the first to invest in the Middle East.[130]

III. The Context: Where Does the Enactment Fit Within the U.S. Legislative Scheme?

The new legislation would have to be harmonized with existing laws in the United States. It would have to comply with the Internal Revenue Code, other foreign aid provisions, and with the Balanced Budget and Emergency Deficit Control Acts. For example, Congress recently passed a provision prohibiting bilateral assistance to countries deemed to be sponsoring terrorism.[131] The new legislation would have to comply with the requirements of this new provision. Thus Syria and Libya would be unable to participate in this program unless they were taken off the list of terrorist-sponsoring countries. (Federal financial assistance to Syria has been made contingent on a number of additional conditions, including allowing Syrian citizens the right and opportunity to emigrate.[132] In

128. *See, e.g.*, Lamia Lahoud, *Attracting Palestinian Investments*, JERUSALEM POST, Nov. 26, 1993, at B2 (quoting businesspeople from the Gulf States and Jordan expressing that they wished to keep a low profile, since their governments might question their loyalty).

129. *Cf.* BRENNGLASS, *supra* note 24, at 8, 22, 99. There is already an international organization that seeks to promote foreign investments by insuring them, the Multilateral Investment Guarantee Agency (MIGA), but its primary objective is to foster development of Less Developed Countries. Like OPIC, MIGA provides political risk insurance to offset risks of investments abroad. But MIGA's purpose is different and arguably more limited. Established relatively recently (in 1985) by the International Bank for Reconstruction and Development (the World Bank), MIGA is not an instrument of U.S. foreign policy, but rather an independent international organization. *See generally* IBRAHIM F.I. SHIHATA, MIGA AND FOREIGN INVESTMENT (1988). If MIGA would agree to broaden its stated purposes and to encourage third parties to enter into joint ventures with Arabs and Israelis, it could probably administer the programs that were suggested for OPIC to administer for the United States. Given OPIC's rather focused objectives, however, it is unlikely that this would be the case.

130. *See supra* text accompanying notes 28–29.

131. *See* Foreign Operations Appropriations, 138 CONG. REC. S15,947-01 (1992).

132. *See, e.g.*, International Security and Economic Cooperation Act of 1991, S. REP. No. 102-100, § 654 (Committee Report of the 102d Cong., July 2, 1991).

December 1993, Syria announced that it would finally permit the free movement of its Jewish citizens.)

On September 28, 1993, the Senate Foreign Relations Committee approved lifting restrictions on U.S. aid to the PLO and to multilateral institutions that provide benefits to the PLO.[133] On October 12, 1993, the House of Representatives passed the Middle East Peace Facilitation Act of 1993, which was nearly identical in content to the Senate bill.[134] The measure, which gave the Clinton Administration until January 1, 1994 to waive the laws that ban aid to the PLO, was extended by six months, until July 1, 1994.[135]

Congress also passed a provision prohibiting assistance to Jordan unless the president certifies to Congress that Jordan has taken steps to advance the peace process in the Middle East and is complying with U.N. sanctions against Iraq. The first condition may not present too big of a problem for Jordan, since its participation in this program would *a fortiori* signify a pro-peace stance. The second condition would need to be monitored, but should not be a significant obstacle since U.S.-Jordan relations have improved markedly over the last two years. Indeed, President Clinton, in a conversation with King Hussein shortly after Jordan signed an agreement setting the basis for negotiations with Israel, pledged to reinstate $30 million in aid to Jordan.[136] All of these U.S. laws must be reconciled before the statute is enacted, but no intrinsic problem prevents this from occurring.

In addition, many laws in Israel and in Arab countries currently impede the joint ventures envisaged by these provisions. Israel has a law prohibiting trade with the enemy.[137] All Arab countries, except Egypt, prohibit trade with Israel or with any company that trades with Israel.[138]

133. *Foreign Relations Committee Backs Waiver of Anti-PLO Laws*, NEAR E. REP., Oct. 11, 1993, at 180.

134. *House Waives Anti-PLO Laws*, NEAR E. REP., Oct. 18, 1993, at 187.

135. *U.S. Senate Votes to Extend Waiver on PLO*, JERUSALEM POST, Nov. 21, 1993, at 12.

136. *U.S. Resumes Military Aid to Jordan*, INTER PRESS SERVICE, Sept. 16, 1993; *Arabs Vow Truce in Territories but 10 Groups Seek to Disrupt Accord*, ST. LOUIS DISPATCH, Sept. 17, 1993, at 3A.

137. Trading with the Enemy Ordinance § 7 (1939), *cited in* Ilana Ben-Ezra, *Import Legislation in Israel Law*, *in* U.S.-I FTAA, *supra* note 31, at 22.02. The Israeli government recently took steps to remove Morocco and Tunisia from its list of hostile nations, paving the way for trade with both. Jose Rosenfeld, *Ministry Gives Morocco Green Light to Trade with Israel*, JERUSALEM POST, Dec. 15, 1993, at 9.

138. The Arab economic boycott of Israel bans imports from, and trade with, all of the following: (1) any Israeli company (the primary boycott); (2) any company that itself trades with Israel (the secondary boycott); and (3) any company that trades with a boycotted company (the tertiary boycott). The United States has passed anti-boycott legislation to prohibit participation in, or compliance with, all facets of the Arab boycott. Export Administration Act of 1979, Pub. L. No. 96-72, § 8, 93 Stat. 503 (codified as amended at 50 U.S.C.A. App. § 2407 (West 1991)). It does not seem difficult to enact new legislation that would be

Israeli and Arab laws need not be reconciled *before* enactment of the statute, since part of the purpose of this legislation would be to create an incentive toward such reconciliation. The United States could propose to Israel and the Arab governments that when they stand ready to cooperate and trade, the United States will encourage its companies to invest in joint ventures with them. It would be up to the Middle East parties themselves to decide whether to do so.

A. *Existing Legislation*

A great deal of U.S. legislation already exists in this arena, although none directly addressing the idea of joint ventures. OPIC, created under the Foreign Assistance Act of 1969, insures U.S. corporations operating abroad against the risk of being nationalized (expropriated), as well as against losses caused by war, revolution, insurrection, political violence, or currency convertibility problems.[139] Its role and purpose are reviewed in Part II.[140] OPIC has recently created an Israel Growth Fund capitalized at between $50 and $75 million.[141] At present, however, no existing OPIC directive exists to foster or support U.S. joint ventures with both Israeli and Arab partners.

Many federal acts and international agreements are designed to foster U.S.-Israel cooperation (as distinguished from U.S.-Israel-Arab cooperation). Israel and the United States have a free trade agreement under which tariffs, quotas, and other barriers to trade between the two countries are almost nonexistent.[142] The Freedom Support Act,[143] whose

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consistent with the anti-boycott statutes. The challenge here lies in persuading the Arab countries to end the boycott against Israel. This could be accomplished by exerting political pressure and creating strong economic incentives to end the boycott. Thus far, Arab nations have insisted that it is "too soon" to renounce the boycott. Chris Hedges, *Despite U.S. Urging, Arab Lands Hold Firm to Their Israel Boycott*, N.Y. TIMES, Oct. 18, 1993, at A3. Both houses of Congress are currently considering legislation that would deny defense aid to countries that comply with the boycott. Hillel Kuttler, *Congress: Tie Defense Aid to Boycott Reversal*, JERUSALEM POST, Nov. 21, 1993, at 1. And many analysts, even in the Arab world, have begun to insist that the boycott must cease because it may do more harm to the Palestinians than to anyone else. *See, e.g.*, Robert K. Lifton, *The Boycott Boomerang*, JERUSALEM POST, Nov. 17, 1993, at 6; *The Real Costs of Mideast Peace*, N.Y. TIMES, Oct. 2, 1993, at 22. U.S. "persuasion" might actually be having an effect; Gulf leaders met at the end of the year to discuss whether they should take any action to relax the boycott. *Gulf Leaders to Discuss Ending Boycott*, JERUSALEM POST, Dec. 20, 1993, at 2.

139. FAA of 1969, *supra* note 26, §§ 2191–2200(b).

140. *See supra* text accompanying notes 96–107.

141. Shuman, *supra* note 78, at 4.

142. Free Trade Agreement, Apr. 22, 1985, U.S.-Israel, 24 I.L.M. 653 (1985); Israel Free Trade Area Implementation Act of 1985, Pub. L. No. 99-47, 99 Stat. 82 (1985) (codified as amended at 19 U.S.C. § 2112). This is the first such agreement concluded by the United States. GUIDE TO I-U.S. FTAA, *supra* note 28, at 2.

143. Freedom Support Act, Pub. L. No. 102-511, 106 Stat. 3320 (1992).

main purpose is to authorize assistance to the former Soviet Union, also designates $10 million in cooperative development projects among the United States, Israel, and developing countries. Similar cooperative development programs have occasionally been passed. These could serve as models for the new legislation.

Israel and Egypt are, respectively, the first and second largest recipients of foreign aid from the United States. Besides the minimum $785 million given to Israel yearly under the Economic Support Fund,[144] Israel recently received $10 billion in loan guarantees to help in the absorption of Soviet refugees. The guarantees serve as collateral and enable Israel to obtain private loans at competitive rates. The United States also maintains numerous strategic agreements with Israel, including technical and military cooperation, joint commercialization of defense technologies, collaboration in civilian space activities and other scientific research, drug interdiction programs, and counter-terrorism coordination. Congress allocated approximately $80 million to U.S.-Israeli cooperation projects in its 1993 defense appropriations bill.[145] A popular, if relatively small, program is the Israel-U.S. Binational Industrial Research and Development Foundation (BIRD), co-founded in 1977 by the U.S. and Israeli governments to stimulate private sector high-technology cooperation.[146]

In addition, Congress created a limited but successful scientific cooperation program in 1979, and expanded it in 1985, under the Special International Security Assistance Act of 1979.[147] The Middle East Regional Cooperation Program (MERC) is administered by AID and fosters scientific and technological cooperation among Israel, Egypt, and the United States. It issues funds, evaluates grant applications, and monitors the progress of projects that address health, agricultural, marine, and environmental problems common to both Israel and Egypt.[148] Representative Henry A. Waxman (D-CA), its main sponsor,

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144. International Security Assistance Act of 1978, Economic Support Fund, Pub. L. No. 95-384, § 532(b)(1), 92 Stat. 730, 734 (1978) (codified as amended at 22 U.S.C. § 2151).

145. *See* Hillel Kuttler, *It's Been a Good Year for Israel at the White House*, JERUSALEM POST, Nov. 26, 1993, at B1.

146. *See, e.g.*, Leslie Katz, *BIRD Boosts Business Alliances for U.S., Israeli Firms*, JEWISH BULL., Feb. 26, 1993, at 4; Jonathan Fedler, *The R&D Model*, LINK MAG. (Israel), Oct. 1993, at 28, 30. Besides industrial development, U.S.-Israel binational foundations also exist in agriculture, science, and education.

147. Special International Security Assistance Act of 1979, Pub. L. No. 96-35, § 8, 93 Stat. 89, 92 (codified as amended at 22 U.S.C. § 3406 (1981)) (stating that it is the policy of the United States to support peace in the Middle East by financing scientific and technical cooperative development projects among Israel, Egypt, and other nations).

148. MIDDLE EAST REGIONAL COOPERATION: BACKGROUND INFORMATION FROM THE OFFICE OF REP. HENRY WAXMAN (copy on file with the *Michigan Journal of International Law*) [hereinafter MERC FACT SHEET].

stated that this program has "succeeded beyond [all expectations w]hile using only 0.1 percent of annual U.S. aid to Egypt and Israel."[149] In the 1993 Fiscal Year Foreign Aid Appropriations Report, Congress earmarked $7 million for Middle East cooperative programs.

Unfortunately, AID "has sought to limit publicity for the program to prevent a backlash against Egyptian participants. . . . As a result, AID receives few requests to fund new projects."[150] Many members of Congress believe more needs to be done. Waxman himself believes that a broader and more active cooperation program must now be sought: "Now that regional cooperation has proven itself, we must become more ambitious. For the fact is that the present program is tiny. . . . Regional cooperation must begin to behave in a more activist way . . . reaching out to new participants in new fields."[151]

In the past, other relatively small amounts have been drawn out of the MERC annual budget and channeled into small, ephemeral programs, such as $500,000 in Arab-Israeli Peace Scholarships, which were disbursed during one year only.[152] AID administers federal foreign aid programs. In 1991, Congress "encouraged" AID to grant up to $350,000 to private voluntary organizations in Israel, the West Bank, and Gaza "for educational, cultural, and humanitarian purposes involving both Israeli and Palestinian private citizens."[153] The Israeli-Palestinian agreement prompted the U.S. government to commit $250 million over the next two years to develop the West Bank and Gaza Strip. Existing foreign aid appropriations will be reshuffled to make these resources available.[154] In sum, a great deal of legislation encouraging U.S.-Israeli cooperation exists. As of this year, the United States has also made a commitment to spur Palestinian economic development.[155]

However, besides MERC and the limited grants designed to encourage social interaction, there are no other laws encouraging *Arab-Israeli* cooperation. No law providing incentives for trade and economic

149. Henry A. Waxman, *Encouraging Mideast Cooperation through Scientific Research*, L.A. HERALD EXAMINER, May 5, 1986.

150. *The Fruits of Peace*, NEAR E. REP., Feb. 23, 1987.

151. Waxman, *supra* note 149.

152. The Arab-Israeli Peace Scholarships were established in 1987 by Continuing Appropriations, Fiscal Year 1988, Pub. L. No. 100-202, § 564, 101 Stat. 1329, 1329-72 (1987), and repealed in 1988 by Foreign Operations, Export Financing, and Related Programs Appropriations Act, Pub. L. No. 100-461, § 558, 102 Stat. 2268 (1988).

153. S. REP. No. 100, 102d Cong., 1st Sess. 50 (1991) (explaining that the Senate Appropriations Committee report to accompany the fiscal year 1991 foreign operations appropriation bill included statement to the above effect).

154. *See infra* text accompanying notes 157–59.

155. *See id.*

interaction among Arabs and Israelis exists. More specifically, no law has ever been considered that is designed to encourage U.S. companies to invest in joint ventures with Arab and Israeli enterprises.

B. *Ways to Enact the New Legislation*

The provisions discussed in this article could be enacted in two different ways. A new act could be passed which specifically advances this program and creates the necessary agencies or mechanisms to support it. Alternatively, each of the relevant provisions could be added to an existing and related statute and adapted to existing programs. The advantage of enacting a separate act and creating a new agency is that it would stand on its own and carry greater symbolism; the commitment of the United States to the peace process would be very clear. The disadvantages are that it would be less feasible politically; that it would be harder to draft such a comprehensive statute; and that new, additional mechanisms would have to be enacted, making it less expedient, less efficient, and more costly.

On the other hand, integrating each provision into a relevant existing statute arguably would be accompanied by less fanfare, but would also involve less expenditure of political will. Simple amendments and additions of supplementary provisions to existing bodies of law might be subject to less opposition. In addition, drafting would be simpler, more straightforward, and less time-consuming, since existing schemes could be utilized and contingencies would already be well thought out. Particularly with respect to the loan guarantee and political risk insurance provisions, it would be far more logical and efficient to incorporate a new mandate into existing functions of OPIC, whose function is extremely compatible with these, than to create a new agency to administer these programs. Thus, whenever possible, these provisions are best pursued through integration into existing bodies of law.

Integration is possible with respect to the tax, loan guarantee, and contingency risk insurance provisions. It is not possible, however, with respect to the creation of a Middle East investment agency, except perhaps by adding a substantial number of duties and functions to OPIC or to AID. The tax provisions could be incorporated into the Internal Revenue Code. Some incentives, such as accelerated depreciation incentives, could be codified into already existing, related provisions. Other incentives, like the investment tax credit, would require a separate section, since the tax code does not currently contain any such provision.

The loan guarantee and political risk insurance provisions could be incorporated into the mandate of OPIC. For example, the law presently mandates that OPIC emphasize investment in Less Developed Countries and in development of certain regions.[156] A provision would need to be added stating that an additional objective should be advancing Middle East peace and that, to that end, OPIC will give preferential consideration to investment projects in joint ventures with Arab and Israeli partners that are found to increase economic interaction among Israel and its Arab neighbors in a constructive manner. Another consideration could be whether the operation will aid in the social and economic development of the region. The consent of the host government to cooperate could be a prerequisite to approval of a guarantee.

A sample provision, to be added as an amendment to the OPIC statute, could be the following:

> The Overseas Private Investment Corporation will, upon the request of an Israeli or Arab government, consult respecting projects in the Middle East proposed by nationals of the United States of America and approved by the host country or countries. With due regard to the strategic, political, and commercial interests of the United States of America, OPIC may approve Government Investment Grants and/or Government Investment Guarantees to a Joint Venture between American nationals, Arab partners, and Israeli partners if the New Investment promotes peaceful cooperation and fosters economic interaction among Arab and Israeli entities, nationals, or governments, and if the project aids in the social and economic development of the region.
>
> For the purpose of this provision, a "New Investment" includes an investment to expand, modernize, or improve existing enterprises.

Permissible guarantees could be limited to a set amount, and additional safety mechanisms could be adopted. But most contingencies would already be provided for under existing OPIC enabling laws.

A consulting provision could also be added, requiring preapproval by OPIC before determining whether a corporation should receive grants or guarantees. This is in contrast to tax incentives, which would be automatically available to companies that met the guidelines.

IV. The Distinctions: How Does This Proposal Differ from Recent Aid Commitments?

The United States, after being caught off guard, has indicated that it is ready to invest in the Middle East. In a speech at Columbia University, Secretary of State Warren Christopher unveiled the U.S.'s

156. FAA of 1969, *supra* note 26.

tentative aid proposal: about $250 million for the West Bank and Gaza Strip over two years.[157] Approximately 60% ($150 million) of this aid would be disbursed in "technical assistance" direct grants, which would come from existing foreign aid appropriations, while the remaining 40% ($100 million) would be in the form of OPIC loans and loan guarantees to spur private investment[158] (the latter being similar to the suggestions of this article, though limited to spur Palestinian growth and not engineered to promote Arab-Israeli or Israeli-Palestinian cooperation). In addition, President Clinton organized a forty-three nation Donor Conference on October 1, 1993, at which donor nations promised approximately $2 billion in aid to the Palestinians over the next five years.[159] Of the $2 billion, $600 million in aid was slated for the first year.

The United States pledged $500 million over the next five years (including the $250 million during the first two years);[160] Saudi Arabia committed to assist with $100 million over the first year and left the door open for future contributions;[161] Israel pledged $75 million in aid;[162] the European Union pledged $600 million over five years;[163] and Japan pledged $200 million over the next two years.[164] The Nordic countries pledged $150 million over an unspecified period.[165] Separately, the U.N. Development Program decided to earmark $30 to $40 million for the territories in 1994, more than doubling its allotment for the previous year.[166] This money is significant because it is apparently the only aid that may be immediately forthcoming.[167]

However, the U.S. package barely aims at keeping up with the immediate necessities of the region. It is far from a visionary package. A more ambitious plan could ensure that the United States turns this crisis of need into an opportunity for shaping the future of the region.

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157. Elaine Sciolino, *U.S. To Contribute $250 Million in Aid for Palestinians*, N.Y. TIMES, Sept. 21, 1993, at A1.

158. *Id.*; *A Financial Commitment to Support Peace*, NEAR E. REP., Oct. 11, 1993, at 179.

159. Steven Greenhouse, *43 Nations Promise Palestinians $2 Billion in Aid*, N.Y. TIMES, Oct. 2, 1993, at A2.

160. *Id.*; *see also* Sciolino, *supra* note 157.

161. Greenhouse, *supra* note 159, at 2. Some have expressed doubts about the Saudis' willingness, or even capacity, to deliver. *See Kiss Now, Pay Later*, THE ECONOMIST, Oct. 30, 1993, at 45.

162. Greenhouse, *supra* note 159, at 2.

163. *Id.*

164. *Id.*

165. *Id.*

166. Sue Fishkoff, *UNDP Earmarks up to $40m. for Territories in 1994*, JERUSALEM POST, Dec. 17, 1993, at A3.

167. *Id.*

The Clinton Administration could take advantage of the otherwise ephemeral goodwill that has been generated in the Middle East — and in Congress — to enhance not only the economic development of the occupied territories, itself an important prerequisite, but also the prospects for peace between Israelis and Palestinians and among Israel and other Arab countries. At the same time, the United States could nurture its own strategic and economic interests.

The tentative U.S. proposal suffers from deficiencies in magnitude, scope, and structure. In terms of magnitude, $125 million over the course of the next year seems shortsighted and inadequate to help the Palestinians. The combined GDP for Israel, the West Bank, and Gaza was over $62.3 billion in 1991.[168] The U.S. aid package constitutes about one five-hundredth of that figure. Although the combined GDP for Gaza and the West Bank alone was only about $2.3 billion between 1990 and 1991,[169] the size of these economies only highlights the dire needs of its 1.8 million inhabitants. According to estimates by the Palestine Development Programme, based on a study by the PLO's Department of Economic Affairs and Planning, $11.6 billion over the next seven years will be necessary.[170] The stakes are far too great to limit aid to a token that will allay moral pangs among the U.S. public. A real dent in the stagnating economies of Gaza and the West Bank must be made to fend off radical and extremist forces that feed off of poverty and desperation.[171]

In terms of scope, the U.S. proposal would better serve the region (and the United States) if — in addition to aid to the Palestinians — a program were designed to foster the economic development and cooperation of all countries involved in the peace process. The ideal program should encourage economic interaction among Israel and all of its Arab neighbors, or even among Israel and all interested Arab nations.

Limiting aid to the development of the occupied territories creates friction and political jealousy in a region that already suffers from an inordinate amount of dissension. Jordanians, for example, are worried

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168. Israel's 1991 GDP was $59.1 billion. The West Bank's and Gaza's hovered around $2.3 billion. *See Let's Stay Together*, THE ECONOMIST, Sept. 11, 1993, at 66, *citing* INSTITUTE FOR SOCIAL AND ECONOMIC POLICY IN THE MIDDLE EAST, HARVARD UNIVERSITY, SECURING PEACE IN THE MIDDLE EAST: PROJECT ON ECONOMIC TRANSITION (1993).

169. *Id.*

170. Othylat Suliman, *Investing in a Palestinian Future*, AL-AHRAM WKLY. (Cairo), Sept. 30–Oct. 6, 1993, at 4; *see also Your Place or Mine?*, THE ECONOMIST, Sept. 18, 1993, at 17.

171. *See, e.g.*, John Kifner, *Arabs Say Prompt Aid Is Crucial for Self-Rule*, N.Y. TIMES, Sept. 20, 1993, at A4; Steven Greenhouse, *Palestinians Seen in Need of Billions in Foreign Aid*, N.Y. TIMES, Sept. 9, 1993, at A12.

that Palestinians will exhaust international contributions to the region. They are concerned about rising poverty and unemployment, burdened with $4 billion in losses incurred during the 1990–91 Gulf War.[172] Jordanians would like foreign donors to aid in trimming down their external debt, estimated to be $6.5 billion.[173] While this pressure could impel the Hashemite Kingdom to move toward peace,[174] it also may have the undesirable effect of stymying private investments of Palestinian businessmen living in Jordan. Many Palestinians residing in Jordan are intimidated and hesitate to invest in the occupied territories because they fear that the Jordanian government will question their loyalty.[175] Similar attitudes exist in Lebanon and Syria.

Israeli Arabs, too, are ambivalent about the Israeli-PLO agreement and the promised foreign aid, because they feel that they are being sidetracked. They argue that while the Jewish State and the world may be warming up to the Palestinians living in the West Bank and Gaza, Israel's 800,000 Arab citizens are being neglected and their call for equality and financial betterment is being ignored.[176] Alouph Hareven, co-director of the Jerusalem-based Association for the Advancement of Equal Opportunity, warns that a new paradox may develop: "As Israel's external problems with its Arab neighbors are gradually being resolved following the breakthrough agreement with the PLO, the internal predicament of Jewish-Arab relations in Israel is likely to grow."[177]

Furthermore, confining foreign aid to the development of the occupied territories is dangerous and deficient. It is dangerous because the risks of a successful peace are not diversified: if Israeli-Palestinian peace efforts fail, negative reverberations will be uniformly and singularly experienced and will substantially set back Arab-Israeli peace efforts. The current aid structure is deficient because it fails to stimulate cooperation among Arabs and Israelis. It is indisputable that developing the economy of the occupied territories must be the first priority of peace

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172. *Jordanian Elections Unlikely to Shake Parliamentary Support for Peace Talks*, JERUSALEM POST, Nov. 8, 1993, at 2.

173. *See id.*

174. *See, e.g.*, Wahid Abdel-Meguid, *Jordan's Piece of the Peace Pie*, AL-AHRAM WKLY. (Cairo), Oct. 7–13, 1993, at 3 (asserting that Jordanian apprehensiveness about being sidetracked led it to seek economic agreements with Israel).

175. Lahoud, *supra* note 128.

176. Steve Rodan, *Israeli Arabs Want a Piece of the Action*, JERUSALEM POST, Nov. 26, 1993, at B3.

177. Alouph Hareven, *Changing National Priorities: Can Israel Develop Its Civil Society?*, NEAR E. REP., Oct. 11, 1993, at 184.

proponents. But in addition, the opportunity should be taken to cultivate relations among former enemies: Israelis, Palestinians, and other Arabs.

Most important in terms of structure, the U.S. package could be redesigned to increase its effectiveness and potency. Even if the U.S. government were forced to ration its foreign aid because of budgetary constraints, better ways of disbursing it could magnify its impact. Direct grants for public projects — which constitute the lion's share of the Administration's current proposal — are indeed necessary to jump-start the economies of Gaza and the West Bank. Still, in addition to direct grants, the United States should consider a multifaceted package of incentives for joint ventures, which would be superior to direct grants in many ways.

Disbursing direct grants to centralized entities could end in a quagmire. It may subject foreign aid to corruption, political domination and misuse of funds, bureaucratic waste, incompetence, and delays in distribution. The PLO has set up the Palestine Economic Development and Reconstruction Agency (PEDRA) to handle the international allotment of aid.[178] But many donor nations and independent Palestinians are disturbed because Yasser Arafat appointed himself chairman of PEDRA and made his deputy, Kadoumi, deputy chairman.[179] Many Palestinians have raised questions about the ability of PLO bureaucrats to deal competently with economic matters.[180] Others have pointed to internal fighting for control over new posts in the Palestinian administration[181] and are concerned that some of the aid may be used to ensure Arafat's political domination by buying political support.[182]

The PLO has promised that the aid will be "spent honestly" and has hired management consultants and auditors to assist it with the task.[183] Meanwhile, however, some of the most respected Palestinian economists,

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178. David Makovsky, *Christopher Tells Arafat He Won't Intervene*, JERUSALEM POST, Dec. 7, 1993, at 1.

179. *PLO Promises Honesty with Aid Money*, JERUSALEM POST, Nov. 21, 1993, at 12; *see also* Edward Said, *The Morning After*, AL-AHRAM WKLY. (Cairo), Oct. 7–13, 1993, at 7; Jon Immanuel, *Negotiations on Self-Rule to Resume in Cairo Tomorrow, PLO Reports*, JERUSALEM POST, Nov. 14, 1993, at 1.

180. Barry James, *Muddle Stalls Palestinian Central Bank*, INT'L HERALD TRIB., Nov. 17, 1993, at 2 (citing senior Palestinian banker in Europe as questioning PLO officials' "experience of civil life"); Said, *supra* note 179; *PLO Is Advertising for Economists*, JERUSALEM POST, Dec. 15, 1993, at 8.

181. Youssef M. Ibrahim, *Arafat Picks Loyalists to Carry Out Peace Accord*, N.Y. TIMES, Oct. 13, 1993, at A7.

182. Makovsky, *supra* note 178; Immanuel, *supra* note 179.

183. *PLO Promises Honesty with Aid Money*, *supra* note 179, at 12.

like Professor Yosef Sayegh, author of the PLO's six-year economic plan, resigned from PEDRA to protest Arafat's refusal to increase the authority of technocrats concerning the use of aid.[184]

International donors are not convinced of PEDRA's independence or technical efficiency and have thus far forestalled the transfer of aid, demanding that economists rather than politicians be in charge of the money.[185] Donor countries have also established a liaison committee to coordinate the disbursement of aid between their countries and recipient organizations, with the World Bank implementing the committee's decision.[186] While the aid is tied up by bureaucratic obstacles, residents of the occupied territories are the ones suffering.

This leads to the final, and most critical, structural deficiency of government grants to other quasi-governmental organizations: the slowness of the process, the lag in affecting the lives of the region's inhabitants. Aid is urgently needed to show to the affected communities the tangible benefits of coexistence. Governmental commitments to make aid available to other government entities that will then provide the funds to a liaison committee that will then disburse the aid to local organizations are not sufficiently swift.

The Israeli-Palestinian Declaration of Principles was signed on September 13, 1993, and the Donor Conference was held on October 1, 1993. Yet, by the end of 1993, well after the originally scheduled December 13 deadline for Israeli troops to pull out of the territories, no aid had been disbursed.[187] No responsible or accountable entity had been found or created to administer all of the aid. PLO officials in the territories did not even have the necessary funds or approval to begin readying the PLO administrative headquarters,[188] let alone to develop the area's infrastructure. And, as of December 20, 1993, no substantial progress in disbursing this vital aid had been made. Palestinians in both Gaza and Jericho are increasingly expressing uncertainty and despair about their economic future. Experts fear that, owing to the lack of information, infrastructure, and organization, aid will not be absorbed, or even disbursed, in time to make a difference.[189] Meanwhile, local businesses

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184. Jon Immanuel, *The Battle for Palestinian Democracy Begins*, JERUSALEM POST, Dec. 10, 1993, at B3.

185. James, *supra* note 180; Lamia Lahoud, *Palestinians Want Donors to Release Funds*, JERUSALEM POST, Dec. 17, 1993, at A12.

186. Jose Rosenfeld, *Liaison Body Set Up to Oversee Palestinian Aid*, JERUSALEM POST, Nov. 8, 1993, at 8.

187. Jon Immanuel, *Gaza: Self-Rule Doesn't Mean Self-Sufficiency*, JERUSALEM POST, Dec. 10, 1993, at B1.

188. Abraham Rabinovich, *Jericho Waking Up to Autonomy*, JERUSALEM POST, Dec. 10, 1993, at B1.

189. An official at the World Bank expressed concern that "the constraint is not money

are eagerly awaiting projects and prospective foreign investors, and potential investors are holding back to see if their investments will be safeguarded.[190]

Incentives to enter into joint ventures are an ideal means of promoting economic development and peace. Incentives skip the corruption and bureaucracy with which centralized public funding would probably be riddled. Incentives foster the participation of private investors, thus avoiding middlemen. Investors, guided by market forces, add their own expertise, tools, and capital to the economy, magnifying the effect of foreign aid.

The Clinton Administration still has time to improve its aid package and to come up with a more efficient and effective program for economic development. For example, tax provisions could be passed by Congress that would immediately create an incentive for the private sector to invest. It is not far-fetched to expect that the Administration will ultimately come up with a package that encourages the private sector to leverage the government's investment in the stability and prosperity of the Middle East. A recently unveiled high technology cooperation program between the United States and Israel[191] may be a sign that economic cooperation programs appeal to President Clinton, who may see in them an effective means of achieving U.S. objectives with relatively small capitalization requirements.[192] Indeed, Vice President Gore said during the Donor Conference that Palestinians would ultimately have to rely on private investors, not foreign aid, to attain long-term prosperity.[193]

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but how much money can be spent productively. The international experience is that even 10 percent of GNP is difficult to [manage and absorb]." Othylat Suliman, *Investing in a Palestinian Future*, AL-AHRAM WKLY. (Cairo), Sept. 30–Oct. 6, 1993, at 4 (quoting World Bank official). The Egyptian economy in the early 1980s was only able to absorb approximately 60% of U.S. aid for similar reasons.

190. *See, e.g.*, *Arabs Set Up Company to Invest in Territories*, JERUSALEM POST, Nov. 19, 1993, at A6; Amira Howeidi, *Palestinian Businessmen Tread Cautiously*, AL-AHRAM WKLY. (Cairo), Sept. 30–Oct. 6, 1993, at 2.

191. Nathan Kempster, *Clinton Refurbishes Ties to Israel, Assures of Security Backing*, L.A. TIMES, Mar. 16, 1993, at A4.

192. Comments by a former member of President Clinton's team are hopefully still indicative of the Administration's philosophy:

> Given the obvious financial constraints, we will need to take much greater care in assuring that the resources we dedicate to advance our important interests abroad are expended in a coordinated and effective manner. . . . We must ensure that our aid activities directly support democracy, free markets, and sustainable development. This will receive my highest priority.

Testimony by Deputy Secretary of State-designate Clifton Wharton: Confirmation Hearings Before the Senate Foreign Relations Committee, 103d Cong., 1st Sess. (1993), *cited in* 1 AIPAC, CONGRESSIONAL REPORT 3 (Jan. 1993).

193. *See* Greenhouse, *supra* note 159, at 2.

V. The Political Climate: When Should Passage be Urged?

In assessing whether passage of a U.S. statute to encourage investment in the Middle East should presently be urged, two factors must be considered: the current domestic sentiment toward this type of legislation, and the present state of affairs in the Middle East peace process.

Until recently, the mood in the United States was such that prospects of passage seemed minimal at best. Foreign assistance programs and foreign involvement were unpopular. A growing number of U.S. citizens believe that the United States should stop funneling money abroad and start concentrating on domestic affairs. A feeling exists among many that domestic issues must now take priority over foreign aid. Some in this camp may even believe that more than enough cooperation programs exist at present that achieve the desired goal of bringing Arabs and Israelis together.

Budget woes and record federal deficits have alerted the country to the need to cut programs. The atmosphere on Capitol Hill is such that it will be difficult to keep the foreign aid budget at its present level, let alone increase it. Indeed, in the last presidential elections, now-President Clinton criticized the Bush Administration for encouraging U.S. companies to relocate in foreign countries. The tax code, it has been contended, promotes foreign investment because the government forgoes taxes on foreign income until it is distributed to U.S. shareholders, thus encouraging "reinvestment of profits rather than rapid remittance."[194] In the past, amendments to foreign aid laws have been passed to ensure that assistance to other countries does not hurt U.S. jobs. For example, in 1978 a provision was added prohibiting OPIC from insuring projects likely to cause significant reductions in the number of employees in the United States.[195] Such a provision could be included in the proposals advanced in this article.

On the other side stand unprecedented international needs and opportunities. The Mideast peace talks are at a critical juncture. Never before have all the parties been so close to a comprehensive peace

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194. Shaffer, *supra* note 75, at 212. *See generally* Robert Frank & Richard Freeman, *The Domestic Employment Costs of U.S. Investment in Developing Countries*, *in* United States Taxation and Developing Countries, *supra* note 79, at 1–27 (arguing that U.S. tax treatment does not clearly encourage more flight of multinationals than would occur anyway, but that its deferral mechanism amounts to an indirect subsidy for Less Developed Countries, whose governments end up taxing amounts that go untaxed by the United States).

195. Overseas Private Investment Corporation Amendments Act of 1978, Pub. L. No. 95-268, 92 Stat. 213 (1978).

agreement. The Israeli-PLO autonomy agreement will be the litmus test to determine whether Israelis and Arabs continue on the arduous road of rapprochement that was first taken two years ago. Over the past two years, for the first time in history, Israelis have sat across the same table from their Arab neighbors to discuss peace;[196] for the first time in history, King Fahd held talks with a group of U.S. Jewish leaders in Saudi Arabia, a country which previously prohibited Jews from even entering the land;[197] for the first time ever, President Hosni Mubarak of Egypt held talks with a delegation of U.S. Jews and said that "the groundwork was laid for possible Egyptian investment in Israel;"[198] for the first time ever, the PLO recognized Israel's right to exist, and Israel recognized the PLO as the legitimate representative of the Palestinian people.[199]

After years of debate, Palestinians and Israelis finally agreed on a plan that grants autonomy to the Palestinians and enters upon the road toward a final settlement between them within the next five years.[200] Significantly, Israel and the PLO have agreed to keep their markets open during the transitional period.[201] In anticipation of potential peace, Israeli and Palestinian agencies and entities are entering into unprecedented dialogues and agreements.[202]

Meanwhile, Jordan, anxious not to be left out, is swiftly progressing toward integration on the political and economic tracks.[203] Shortly after the signing of the Israeli-Palestinian Declaration of Principles, Jordan signed an agreement setting the bases for negotiations with Israel.[204] This was followed by a meeting in the Oval Office among President Clinton, Crown Prince Hassan of Jordan, and Israeli Foreign Minister Shimon Peres, the first such high-level public gathering.[205] In less than one month, much-heralded economic cooperation "understandings" had been reached

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196. *See supra* text accompanying notes 1–14.

197. *Jews and Saudis Hold First Talks in Saudi Arabia*, N.Y. TIMES, Jan. 22, 1992, at A3.

198. Cynthia Mann, *Jewish Leaders Hold First-Ever Meeting with Mubarak*, JEWISH BULL., Mar. 5, 1993, at 36.

199. *See* Haberman, *supra* note 1.

200. Thomas L. Friedman, *Dividing a Homeland*, N.Y. TIMES, Sept. 15, 1993, at A1, A17.

201. David Makovsky, *Peres: Israel, PLO Agree on Open Market*, JERUSALEM POST, Dec. 17, 1993, at A1.

202. *See, e.g.*, Michal Yudelman, *Histadrut Palestinian Trade Unions Sign Pact*, JERUSALEM POST, Nov. 7, 1993, at 1.

203. *See, e.g.*, Abdel-Meguid, *supra* note 174, at 3 (asserting that Jordanian apprehensiveness about being sidetracked led it to seek economic agreements with Israel).

204. See Sciolino, *supra* note 4; *see also Jordan Takes Big Step Toward Peace*, ATLANTA J. & CONST., Oct. 30, 1992, at A4.

205. Thomas L. Friedman, *There's No Disguising It This Time as Israel and Jordan Meet in U.S.*, N.Y. TIMES, Oct. 2, 1993, at 1.

by Jordan's King Hussein and Foreign Minister Peres.[206] As a direct result, Jordanian banks were allowed to open branches in the occupied territories.[207] Most significantly, when elections perceived as a referendum on the peace process took place, Jordanian voters embraced the King's aperture to Israel and turned down the Islamic fundamentalist opposition.[208]

Syria, despite its discomfort with the Israeli-Palestinian agreement, has grudgingly indicated to President Hosni Mubarak of Egypt that it continues to be committed to "a peace of the brave" with Israel.[209] Moreover, on the eve of U.S. Secretary of State Warren Christopher's visit to Damascus, Syrian President Hafez Assad promised to allow the remaining Jews living in Syria to emigrate to Israel and said that he would attempt to gather information on Israeli soldiers missing in action. In return, Christopher announced that President Clinton would meet Assad in January 1994.[210]

All of these developments contrast starkly with what seemed, just months ago, to be an irreversible trend toward separation. It was only April of 1993 when Israeli Prime Minister Yitzhak Rabin, amid rising violence, sealed off the West Bank and Gaza Strip and indicated that his cabinet would begin plans to reduce permanently the number of Palestinians who would be allowed to work in Israel proper.[211] Now that there has finally been a breakthrough, the United States and other

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206. David Makovsky, *Hussein, Peres Signed 'Understandings' in Amman Last Week*, JERUSALEM POST, Nov. 7, 1993, at 1.

207. Jose Rosenfeld, *Deal Signed Allowing Jordanian Banks to Open Branches in Areas*, JERUSALEM POST, Dec. 7, 1993, at 8. Palestinians have raised some objections to the present establishment of Jordanian banks in the territories. *PLO Asks Jordan to Delay Reopening Banks in Territories*, JERUSALEM POST, Dec. 20, 1993, at 8.

208. Youssef M. Ibrahim, *Jordanian Voters Spurn the Radicals*, INT'L HERALD TRIB., Nov. 10, 1993, at 1; *see also* P.V. Vivekanand, *Parliament Welcomes Moves Toward Peace, Tripartite Economic Working Group Meets Today in U.S.*, JORDAN TIMES, Nov. 30, 1993, at 1.

209. *See* William E. Schmidt, *Syrian Leader Plays a Waiting Game*, N.Y. TIMES, Sept. 21, 1993, at A8; Chris Hedges, *Mubarak Reports Syria Wants Peace with Israel*, N.Y. TIMES, Sept. 20, 1993, at A1, A8; *see also* David Makovsky, *Syrian Statement Pleases Negotiators*, JERUSALEM POST, Sept. 24, 1992 (statement by Syrian Foreign Minister Farouk Sha'ara that Syria is committed to finding "total peace").

210. Douglas Davis, *New Evidence Links Syria, Iran to Lockerbie Disaster*, JERUSALEM POST, Dec. 21, 1993, at 4; *see also* Batsheva Tsur, *Rabin Hopes Assad Will Free Syrian Jews as He Promised*, JERUSALEM POST, Oct. 29, 1993, at 14.

211. Clyde Haberman, *Israel Starts Planning to Replace Its Arab Workers*, N.Y. TIMES, Apr. 5, 1993, at A6. Separating the West Bank from Israel seems geographically and economically impossible, at least in the short term, according to most studies and experts. Wages derived by Palestinian workers in Israel account for one-third of the total revenues derived by Palestinians in the West Bank. *Id.* On the other hand, Israelis have been unwilling to fill low-paying jobs in agriculture and construction. *Id.*

countries interested in attaining stability in the region must seize the momentum precipitated by these historic events and spread the mist of hope and optimism throughout the region before it evaporates. Creating tangible incentives for peace could impel the hold-out countries — as well as some of the rejectionist Israeli and Palestinian elements — to move forward.

It must be emphasized, however, that the Israeli-Palestinian breakthrough has not crystallized into the crown jewel of peace, and an arduous process of experimentation will have to occur before the carbon of hatred is transformed into a diamond of tolerance. Indeed, the peace process is guaranteed to oscillate between optimism and disillusionment. Peace supporters' most important task is to ensure that any swing is not so extreme that it derails the process.

Already, many seemingly irreconcilable disagreements have been registered and overcome. Unfortunately, however, discontent at the slow progress on the road to independence has significantly eroded support for the Palestinian-Israeli agreement among Palestinians: from 64.9% after the signing of the agreement to 41.5% in mid-December.[212] In the first elections since the accord was signed, Yasser Arafat's supporters were ousted from control of the student council in Bir-Zeit University, traditionally a stronghold of Arafat's Fatah party, by opponents of the accord.[213]

All of the international aid promised has not materialized and does not seem to be forthcoming. As of December 15, 1993, the only projects about to be undertaken were those put together by the Israeli Civil Administration.[214] Economic despair, coupled with stagnation in the negotiations for the implementation of the Interim Agreement, have prompted even Fatah supporters to renounce the agreement.[215]

There are two lessons to be learned from these developments. First, the architects of peace must be patient and persevering in their efforts. The fact that coexistence is proving to be so hard to achieve and to be such a disillusionment to its anxious participants is evidence that more, not less, must be done by those who cherish peace. Second, the patrons of peace must pump more coal into the engine of peace. The soundness

212. Jon Immanuel, *Palestinian Support for Accord Falls*, JERUSALEM POST, Dec. 17, 1993, at A1.

213. Lamia Lahoud, *Hamas-DFLP-PFLP Oust Fatah from Control of Bir-Zeit University*, JERUSALEM POST, Nov. 25, 1993, at 14.

214. *See, e.g.*, Jose Rosenfeld, *Ministry Gives Morocco Green Light to Trade with Israel*, JERUSALEM POST, Dec. 15, 1993, at 9.

215. *See, e.g.*, *Gaza Fatah Hawks Renounce Truce*, JERUSALEM POST, Nov. 30, 1993, at 1. The Hawks later rejoined the truce.

of a proposal like the present one to foster regional economic cooperation expeditiously in order to attain stability does not rest on initial success in Israeli-Palestinian relations, but rather on broader principles of human nature and economic interaction. If peace path adherents are to cease dwindling, it is essential to ameliorate the lives of those touched by the process.

The provisions advanced in this article are helpful to the peace process in three ways. First, they provide tangible economic rewards to the peace-risk-takers: increased foreign investment and economic development. These "peace dividends" in turn make inhabitants more supportive of the sweeping process. In other words, these provisions act as buffers that protect against chronic shocks of disgruntlement with the peace process. Second, the provisions help cement economic and political relations, as explained in Part I: increased economic interaction engenders vested interests in maintaining commercial relations. Third, and particularly important in terms of timing, they demonstrate a commitment by the United States to be a partner in the peace process and to compensate valiant steps by defusing the risks taken.[216] Signaling such U.S. commitment and providing such incentives are important steps that can prepare the populations in the Middle East for such change and convince their leaders that it pays to cooperate. For the United States, peace will bring many benefits too.

How are global and domestic factors to be reconciled? A proponent of this legislation would emphasize that the U.S. economy will benefit in the long-term, as foreign markets are opened up for U.S. companies. In addition, to the extent the proposals succeed in stimulating investment by U.S. companies that would otherwise not have taken place at all, the tax revenues generated by such investments, even after taking account of tax credits and disbursed federal guarantees, will represent a net gain in federal revenues. Far more important, however, is the indirect effect of these incentives in promoting peace and stability. It is in the interests of the United States to invest a small amount in Middle East peace in order to avoid substantial military outlays in the future, as was the case with the Gulf War.[217] Preventive measures are preferable to wars.

The proposed legislation, which would have been an unlikely candidate for deliberation during this or the next term of the legislature, is now worthy of serious consideration because of the significant overtures

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216. *See Foreign Relations Committee Backs Waiver of Anti-PLO Laws*, NEAR E. REP., Oct. 11, 1993, at 180 (citing letter to President Clinton by Representative Rob Andrews (D-NJ): "As Israel has taken her 'risk for peace,' the U.S. must remain her most constant ally.").

217. That is perhaps why the president of the Overseas Development Council, John Sewell, called for the placement of aid to Israel and Egypt in a separate "Middle East Peace Account." ESTER KURZ, 2 AIPAC CONGRESSIONAL REPORT 2 (Feb. 1993).

in the peace process that took place in September 1993 and the clear needs of the region. These have changed the mood on Capitol Hill and in the Administration. Whereas until recently there was constant pressure to reduce the Middle East foreign aid budget, now the feeling in Congress is that aid to the region must be increased to procure the fragile peace among Israelis and Palestinians.[218] It is no longer a question of whether to help the region; rather, the question now centers on the means to do it.

CONCLUSION

Possible skepticism about the effectiveness of these incentives is likely to be encountered. Admittedly, at present, many countries that are at war with Israel could not, and would not, participate in the efforts of a Middle East investment agency or in joint ventures with Israelis and Americans. Some are doubtful that these measures would have any effect in bridging the gap between long-time enemies. If Arabs and Israelis have been at odds during the past forty-five years over issues of life and death, religion, land, and honor, the prospect of extra profits will not bring them together. Moreover, joint ventures require a high degree of close cooperation and a substantial unity of interest among partners;[219] it is risky to use this investment vehicle when the partners are former enemies.[220]

But joint ventures between Arabs and Israelis already exist today, even if in small numbers.[221] Israeli newspapers have recently been

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218. Kuttler, *supra* note 145, at B1.

219. Dobkin, *supra* note 54, at 10.03.

220. Those concerned for the security and safety of countries in the Middle East could also object to this program on the grounds that encouraging joint ventures among Arabs and Israelis could hamper the defense capabilities of the countries, make infiltrations easier, and make a country dependent on a potential or current enemy. Concerns with infiltration of defense industries and capabilities seem unwarranted, because areas that are thought to be sensitive by either country could simply be treated as off-limits to these programs. Governments could pass laws against cooperation or interaction in defense industries. Moreover, a process of self-selection would essentially ensure that Israelis and Arabs would not divulge to each other military secrets or even cooperate in these areas, except to the extent that, after careful deliberation, leaders of the countries involved see it in their interests to cooperate. Consequently, the risk of cooperation in sensitive areas would be negligible, and the potential effect of weakening anti-spy mechanisms would be even more negligible. As to the concern regarding making countries dependent on their enemies, it is true that countries would become interdependent and to that extent could become subject to the whims of their neighbors. But this is the very objective of the program. By creating mutual interdependence, countries would realize that it is in their interests to cooperate and maintain good relations with their neighbors. Moreover, governments could determine the areas in which self-sufficiency is imperative and designate programs to ensure that these sectors are independently maintained.

221. *See, e.g.*, *Negocios con el Enemigo*, EL PAIS (Spain), Sept. 19, 1993, at 9 (disclosing that Israeli and Arab businessmen have already been engaging in quiet cooperation and trade projects).

reporting with eagerness prospective alliances between Israeli and Arab companies: an Israeli airline has signed contingent supply, flight, and refueling agreements with agents in Amman, Beirut, and Damascus;[222] Koor Industries, Israel's leading industrial concern, and the Ghussein Group, led by the "Palestinians most important business leader," have entered into a $60 million deal;[223] Saudi Arabian investors have purchased a stake in an Israeli corporation;[224] and Israeli banks have established relationships with Palestinian banks in the territories.[225] From the opening of a hospital in Gaza by Israelis and Palestinians[226] to smaller trade transactions between Egyptians and Israelis,[227] a few determined businessmen have forged ahead.

Egypt, Jordan, and Palestinians living in the occupied territories would be able to benefit immediately from the investment project. Most important, one of the very objectives of this program would be to "entice" countries such as Tunisia, Oman, the United Arab Emirates, Kuwait, and Morocco, who have already hinted at improving relations with Israel,[228] into participation. Morocco, in particular, seems eager to get on with the business of peace: it is negotiating to open airlinks with Israel,[229] and two Moroccan banks have set up official correspondent relations with Israeli banks.[230]

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222. *Arkia Makes Flight Plans for Peace*, JERUSALEM POST, Nov. 11, 1993, at 14.

223. Amy Dockser Marcus, *Big Israeli Firm and Palestinians Go into Business*, WALL ST. J., Oct. 6, 1993, at A14. The venture includes two other partners: Banesto, a Spanish Investment Bank, and Omnimum Nord Africa, a Moroccan industrial concern. *Id*; *see also* Neal Sandler, *Koor's Peace*, LINK MAG. (Israel), Jan. 1994, at 18, 21.

224. Galit Lipkis Beck, *Saudi Arabian Investors Buy 5% of Istec*, JERUSALEM POST, Nov. 11, 1993, at 9.

225. Galit Lipkis Beck, *Leumi in Partnership to Set Up Bank in Areas*, JERUSALEM POST, Dec. 20, 1993, at 8; Jon Immanuel, *Gaza Banks on Growing Economic Ties*, JERUSALEM POST, Nov. 26, 1993, at B2.

226. Judy Siegel, *Herzliya Medical Center Opens Gaza Clinic with Arab Businessman*, JERUSALEM POST, Dec. 21, 1993, at 12.

227. *Frutarom Signs Deal with Egyptian Company*, JERUSALEM POST, Dec. 16, 1993, at 9 (Egyptian company and Israeli producer of fragrances and flavors sign million dollar pact); Galit Lipkis Beck, *Zoglowek Negotiating Deals in China, Egypt*, JERUSALEM POST, Dec. 20, 1993, at 8 (meat and poultry processor negotiating to establish factories). *See generally* Ibrahim Fahr-Rali, *The Complete List of Egyptian-Israeli Trade Opportunities*, ROSE EL YOUSSEF (Egypt), Nov. 15, 1993, at 22 (title translated from Arabic).

228. *See generally* Clyde Haberman, *Pact with PLO is Expected to Open the Way for Ties to Muslim Countries*, N.Y. TIMES, Sept. 15, 1993, at A8.

229. Amir Rozenblit, *Morocco Seeking Air Link with Israel*, JERUSALEM POST, Dec. 15, 1993, at 3.

230. *See* Galit Lipkis Beck, *Leumi Sets Up Direct Correspondent Relations with Moroccan Bank*, JERUSALEM POST, Nov. 4, 1993, at 9; *Hapoalim Establishes Official Correspondence Relationship with Morocco's Largest Bank*, JERUSALEM POST, Nov. 15, 1993, at 8.

Many other countries, including Lebanon and Syria, have dire economic needs and desperately want direct foreign investment.[231] This program could bring them to the realization that, besides long-term harmony and peace, confidence-building measures would yield immediate economic benefits sufficient to counteract at least some critics who do not want a peaceful resolution of the conflict. Economic interaction would shatter myths about former enemies as it educates participants about each other's cultures and concerns, ultimately strengthening bonds among the participants.

The concept of regional cooperation in the Middle East is not untested. Cooperation already takes place in limited sectors, such as the scientific and agricultural fields. Most notably, it encompasses Egypt and Israel, who are now discussing linking their electricity grids.[232] Recently, however, countries such as Saudi Arabia and Morocco have quietly expressed their interest in specific scientific cooperation.[233] Government officials in Israel and Jordan, who have often pondered the potential for regional cooperation if only peace would come, are now discussing agricultural and health projects[234] and performing feasibility studies in the areas of infrastructure, water, rail transportation, chemicals, and tourism.[235]

But why wait for it? Why not push for broader Arab-Israeli cooperation? This program is very ambitious, but its potential is extremely far-reaching. It would be an effective way to bring Arabs and Israelis together. Its positive potential is too great — and its negative potential too small — to be ignored just because it might not be successful.

One must keep in mind that this is just a small program. No big dents will be made, and peace will not be achieved overnight. At the same

231. *See, e.g., Lebanon Launches Capital Markets Program*, JERUSALEM POST, Nov. 4, 1993, at 9 (Lebanon hopes to raise $30 billion in next 10–15 years); Abdel-Meguid, *supra* note 174, at 3 (arguing that Lebanon's independent 10-year plan could be in jeopardy if Beirut ignores pressure to enter into deal with Israel).

232. *Création par L'Egypte d'une Station pour la Génération de l'Electricité à Gaza et Jéricho* [*Egypt's Creation of a Station for the Generation of Electricity in Gaza and Jericho*], LE JOURNAL D'EGYPTE, Nov. 17, 1993, at 2; Yigal Kotzer, *Israeli, Egyptian Power Grids to Be Linked*, JERUSALEM POST, Nov. 21, 1993, at 1; Joshua Shuman, *IEC Workers Head to Egypt to Discuss Linking Grids*, JERUSALEM POST, Nov. 30, 1993, at 2.

233. *Cf.* MERC FACT SHEET, *supra* note 148 ("Participants in the marine sciences project are currently involved in quiet discussions in effort [sic] to involve other Middle Eastern countries in regional cooperation."); Waxman, *supra* note 149 ("Several moderate Arab states expressed interest in joining the regional cooperation program quietly and unofficially.").

234. Lisa Palmieri-Billig, *Tsur Talks Agriculture with Morocco, Jordan*, JERUSALEM POST, Nov. 11, 1993, at 2.

235. David Makovsky, *Jordan Looking for Best Price in Middle East Peace Bazaar*, JERUSALEM POST, Nov. 14, 1993, at 12.

time, these provisions would create an added reason for peace today, an added incentive to take small confidence-building measures. No substantial outlay of federal money would result, and the risks would be minimal. Most important, passage of these provisions would constitute a strong symbol of U.S. commitment to the peace process. The results of passage could produce ripple effects for several players that would benefit from this program. An army of peace would be created from the core of beneficiaries whose sole mandate would be to uphold and safeguard peaceful interaction.