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The Qualifying Industrial Zone Initiative - A New Tool to Provide Economic Assistance to Middle Eastern Countries Engaged in the Peace Process

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Abstract

This Article first examines the role of economic and developmental assistance in the context of peacemaking and then focuses on one specific innovative economic assistance measure: the Qualifying Industrial Zone (“QIZ”) initiative. Part I of this Article describes how addressing the economic requirements of the negotiating parties has interplayed with their other requirements within the overall framework of peacemaking. Specifically, based on the experience gained over the last thirty years of the Middle East peace process, this Part describes the overarching requirements that the parties have pursued through peace negotiations. As explained below, former Middle East warriors have always attempted to ensure that they attain certain minimum political, security, and economic threshold objectives in negotiating peace agreements. This Part of the Article, then, articulates four “laws” of reconciling these three requirements among competing interests, emphasizing the role of economic assistance. Part II of this Article examines a novel U.S. government initiative that has recently surfaced and gained more significance among other economic assistance measures that have been offered to proponents of peace in the Middle East. The QIZ initiative by the U.S. government extends free access to the U.S. market for goods comprised of components originating in the territories of former adversaries and manufactured inside a jointly-administered QIZ, established along the borders of the former enemies who are now engaged in peacemaking. The success of the QIZ initiative, as well as the limitations on additional U.S. government spending to support future Middle East peace agreements, may result in the extension of the QIZ initiative to additional borders separating former enemies throughout the Middle East.

THE QUALIFYING INDUSTRIAL ZONE INITIATIVE — A NEW TOOL TO PROVIDE ECONOMIC ASSISTANCE TO MIDDLE EASTERN COUNTRIES ENGAGED IN THE PEACE PROCESS

*Joel Singer**

INTRODUCTION

During the second half of the 20th Century, the Middle East became the battleground for numerous, distinct wars — the 1962-1967 Egypt-Yemen War; the 1975-1990 Lebanese Civil War and the Syrian intervention there; the 1980-1988 Iran-Iraq War; and the 1990 Iraq-Kuwait War, to name a few. Yet, the Arab-Israeli conflict has uniquely captured the world's attention as the most complex and, hence, the hardest to resolve. The Middle East peace process (a term now identified exclusively with the attempts to resolve the Arab-Israeli conflict, as opposed to all other Middle East disputes) has required significant patience and determination, coupled with ingenuity and creativity. Almost all the lessons learned through this process are directly applicable to attempts to resolve disputes in other parts of the world. One of these lessons validates the importance of providing economic and developmental assistance to former enemies as they transition from war to peace. This Article first examines the role of economic and developmental assistance in the context of peacemaking and then focuses on one specific innovative economic assistance measure: the Qualifying Industrial Zone ("QIZ") initiative.

Part I of this Article describes how addressing the economic requirements of the negotiating parties has interplayed with their other requirements within the overall framework of peacemaking. Specifically, based on the experience gained over the last thirty years of the Middle East peace process, this Part de-

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scribes the overarching requirements that the parties have pursued through peace negotiations. As explained below, former Middle East warriors have always attempted to ensure that they attain certain minimum political, security, and economic threshold objectives in negotiating peace agreements. This Part of the Article, then, articulates four “laws” of reconciling these three requirements among competing interests, emphasizing the role of economic assistance.

Part II of this Article examines a novel U.S. government initiative that has recently surfaced and gained more significance among other economic assistance measures that have been offered to proponents of peace in the Middle East. The QIZ initiative by the U.S. government extends free access to the U.S. market for goods comprised of components originating in the territories of former adversaries and manufactured inside a jointly-administered QIZ, established along the borders of the former enemies who are now engaged in peacemaking. The success of the QIZ initiative, as well as the limitations on additional U.S. government spending to support future Middle East peace agreements, may result in the extension of the QIZ initiative to additional borders separating former enemies throughout the Middle East.¹

I. *SOME BASIC CONSIDERATIONS OF PEACEMAKING*

A. *Peace Is Attainable Only If Its Gains Are Greater Than Its Price*

Most people tend to consider peacemaking to always be a “win-win” situation — that is, one where all relevant parties stand to gain and, therefore, cannot understand why the Middle East peace negotiations take so long and often end without any results. This thought has been cultivated by many myths. One myth is that the Middle East negotiating parties have failed to reach an agreement because they have not talked to one another and, therefore, all that one needs to do is put them in the same room and close the doors until they reach an agreement. A sec-

1. This Article is an outgrowth of two presentations made by the author. Part I of this Article is based on a presentation made by the author on April 9, 2002, at the World Bank in the context of the Sustainable Development Month, entitled: “The Middle East Conflict: Can Development Advance Peace in the Middle East?” The full presentation is available at http://www.worldbank.org/wbi/B-SPAN/sub_essd_peace_security.htm. Part II of this Article is based on the presentation made by the author at the 2000 Annual Meeting of the American Society of International Law.

ond myth is that the parties have failed to reach an agreement because of the lack of “chemistry” between the negotiators and, therefore, all that one needs to do is replace them with more charming negotiators. A third myth is that 90% of the barrier to peacemaking is psychological and, therefore, all that one needs to do is break the psychological barrier and peace can immediately be accomplished.

In fact, however, enemies will agree to make peace only if they are each convinced that their respective interests will be served. In other words, if the parties determine that peace-making is not in their best interests (and, in fact, it takes only one of the parties to so determine), no measure of face-to-face time, “chemistry,” or psychological barrier-breaking would change this condition. Conversely, if the parties conclude that it is in their interests to make peace, peace will be accomplished even if the above-mentioned factors do not exist at all.² Accordingly, to reach peace, the parties must each conclude that they will be better off if they accept the peace package offered, rather than retain the state of war.

That neighboring countries may prefer the continuation of war over peace appears inexplicable. Yet, peace-making is a “give and take” process that not only involves gains, but also requires many sacrifices.³ Moreover, even if the “price is right,” the concerned governments must also be able to “sell” the peace agreement to their constituencies as a balanced package. Inability to “sell” this package may cost the concerned leaders their political careers⁴ or even their lives.⁵ Accordingly, like in any

2. Thus, the 1974 separation agreements between Israel and Egypt, and Israel and Syria, were reached on the basis of Kissinger’s Shuttle Diplomacy, without any face-to-face meetings between the parties. Similarly, the groundbreaking 1978 Camp David Accords were concluded between Egypt and Israel, even though their two leaders, the Egyptian President Anwar Sadat and the Israeli Prime Minister Menachem Begin, clearly could not stand one another and exchanged very few words throughout the thirteen-day Camp David Summit Meeting. *See generally* WILLIAM QUANDT, *CAMP DAVID, PEACEMAKING AND POLITICS* (Brookings Institution, 1986); BOUTROS BOUTROS-GHALI, *EGYPT’S ROAD TO JERUSALEM* (1997).

3. President George H. W. Bush’s address to the Middle East Peace Conference, convened at Madrid, Spain, on October 30, 1991, and opened with the following sentence: “Peace will only come as the result of direct negotiations, compromises, give-and-take.” The text of this address is reprinted in WILLIAM QUANDT, *PEACE PROCESS AMERICAN DIPLOMACY AND THE ARAB-ISRAELI CONFLICT SINCE 1967*, 504, app.O (Brookings Inst., 1993).

4. In 1995, the Rabin-Peres government managed to obtain an Israeli Knesset ap-

other bargain, each side wants to ensure that, under the contemplated deal, its gains will be worth the price that it is required to pay and the risks that it is required to take.

B. *Political, Security and Economic Interests*

The history of the Middle East peace process demonstrates that each time a peace arrangement is offered, the question of whether it objectively serves the respective Nations' interests, as well as whether it is sellable to the respective constituents, is answered based on the consideration of three main clusters of interests: political, security, and economic.

The political interests are important to each side because of national considerations. They include issues such as sovereignty, borders, and holy places. The security interests are those that must be protected by each side to secure its borders and to defend its respective populations from external as well as internal threats. The economic interests encompass those requirements that are needed by the two sides to provide jobs and other economic opportunities for their citizens, as well as to develop the respective countries as a whole.

C. *The Role of Economic Assistance*

The manner by which the parties' economic needs have, in the past, been satisfied falls broadly into three categories: (1) a resumption of trade between the former enemies resulting from the removal of wartime trade barriers and boycotts;⁶ (2) an in-

proval of the Oslo II Agreement (Israel-PLO Interim Agreement on the West Bank and the Gaza Strip, Sept. 28, 1995, 36 I.L.M. 551 (1997)) with a majority of only one Knesset member, and, a few months later, Peres lost the elections. Israeli Prime Minister Ehud Barak was defeated dramatically in the 2001 elections after the extent of his concessions to Chairman Yasir Arafat in the Camp David Summit had been leaked, even though such concessions did not lead to any agreement.

5. In 1978, the Palestinian Liberation Organization ("PLO") representative to London, Said Hamami, was assassinated after making remarks supporting peace with Israel. In 1981, Egyptian President, Anwar Sadat, was assassinated as a result of his agreement to make peace with Israel in 1979. In 1982, Lebanese President, Bashir Gemayel, was assassinated because of his willingness to make peace with Israel. In 1995, Israeli Prime Minister, Itzhak Rabin, was assassinated because of his agreement to enter into the Oslo Agreement with the PLO.

6. Contrary to the conventional wisdom, in the Middle East, this factor has been almost negligible. Thus, the signing of the peace treaties between Israel and Egypt (1979) and Israel and Jordan (1994) resulted in very little trade between these countries. This phenomenon is due to two main reasons. First, the economy of Israel, on

crease in trade between each of the former enemies and third countries;⁷ and (3) economic assistance provided by third countries, primarily the United States.

Economic assistance may take many forms and have many objectives. In supporting Israel, U.S. assistance has been primarily military (but it has also included aid for absorption of Soviet and Ethiopian Jewish refugees).⁸ On the other side of the spectrum, U.S. support for the Palestinians during the Oslo process consisted primarily of funds provided through the U.S. Agency for International Development ("USAID") to develop infrastructure projects in the West Bank and Gaza (such as for water projects, schools, and road construction), and loan guarantees, provided through the U.S. Overseas Private Investment Corporation ("OPIC"), to support investments in privately-owned businesses in the West Bank and Gaza, as well as OPIC investments in such businesses.⁹ U.S. support for Egypt and Jordan has con-

the one hand, and that of Egypt and Jordan, on the other hand, are not compatible; in other words, there is not much demand in the markets of one for the products of the other. See generally Israeli Ministry of Finance, *Economic Outlook* (Jan. 30, 2000), available at http://www.mof.gov.il/hachnasot/eo1_00/ (anticipating very little trade between Israel and Syria if peace were to be accomplished between the two countries). This conclusion is based on Israel's experience with exports to Jordan and Egypt, which amount to only 0.4% of the total Israeli annual exports. *Id.* The paper adds that "[m]ost of our neighbors' imports (from all origins) are consumer goods, whereas Israeli exports (to all destinations) are typified by a very high proportion of high-tech products." *Id.* Moreover, due to the lack of a solution to the Israeli-Palestinian dispute, the formal elimination of the Arab anti-Israel economic boycott in Egypt and Jordan in the context of the two countries' peace treaties with Israel, has not gained popular acceptance in these countries. As a result, the attitude regarding the purchasing of Israeli products continues to be negative in the Egyptian and the Jordanian markets.

7. At least for Israel, this factor represented a major element of the "peace dividend." Thus, following the signing of the 1993 Oslo Agreement and the 1994 Treaty of Peace with Jordan, foreign investment in Israel grew sharply. According to *Economic Outlook*, foreign investments in Israel increased from an average of US\$100 million per year up to 1991 to an annual average of US\$3 billion from 1992-2000. *Id.* Foreign investment in Jordan increased more than fourteen times to US\$43 million between 1994, the year in which it signed a Treaty of Peace with Israel, and 1995. See Lori Plotkin, *Israel-Jordan Peace: Taking Stock, 1994-1997* (Wash. Inst. for Near East Policy, 1997). The general consensus in Jordan, however, is that Jordan missed out on the opportunity to harvest the "fruits of peace" both in terms of attracting foreign investments, and in terms of accomplishing significant exports to Israel. See generally Francesca Sawalha, *Seven years after treaty, Jordanians still looking for comprehensive peace*, JORDAN TIMES, Oct. 26-27, 2001.

8. See generally Clyde Mark, CRC REPORT FOR CONGRESS/MIDDLE EAST: U.S. FOREIGN ASSISTANCE (Mar. 28, 2002), available at <http://fpc.state.gov>.

9. Thus, immediately after the signing of the Israel-PLO Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, 32 I.L.M. 1525 (1993)

sisted of a combination of military assistance and economic development aid.¹⁰

D. *The Four "Laws" of Attaining Peace Agreements*

Keeping in mind the three requirements (political, security, and economic) that the Middle East Nations have historically attempted to attain through peace negotiations, this Article attempts to decipher below certain patterns of successes and failures, based on four "laws," which the Author believes accurately explain why certain attempts at peace have historically failed and why others have succeeded.

1. The Parties Must Satisfy All Three Requirements

Looking at peace as a very heavy package that requires substantial support to lift from conflict, one can view these three requirements as the ropes with which the parties lift the package. While each rope standing alone may be insufficient to lift

("Oslo I"), the U.S. government committed US\$500 million to the West Bank and Gaza through USAID and OPIC. See Secretary of State Warren Christopher's Remarks at the Opening Session of the Ad Hoc Liaison Committee Meeting, Washington, D.C. on Sept. 29, 1995, reproduced in *A Common Strategy for Economic Growth in the West Bank and Gaza Strip*, in 6 U.S. DEP'T OF STATE DISPATCH, no. 41, 725 (Oct. 9, 1995). See also *Economic Development and U.S. Assistance in Gaza/Jericho: Hearing before the Subcommittee on Near Eastern and South Asian Affairs of the Committee on Foreign Relations*, 104th Cong. 2 (1995) [hereinafter *Economic Development and U.S. Assistance in Gaza/Jericho*] (reporting statements made by USAID's Assistant Administrator for Asia and the Near East and by OPIC's Executive Vice President).

10. See Mark, *supra* n.8. Other members of the global community have also given tremendous amounts of aid to economic development projects in the Middle East. For example, the Border and Local Industrial Estate Development Program is a World Bank project that was designed in the early- to mid-1990s to establish three industrial zones in the West Bank and Gaza. In conjunction with that program, the Gaza Industrial Estate was established at Karni with a US\$10 million credit from the International Development Association (World Bank), a US\$5 million loan from the European Investment Bank, and a US\$6.3 million assistance package by the USAID. Other World Bank projects in the West Bank and Gaza include the US\$40 million Municipal Infrastructure Development Project, the US\$25 million Gaza Water and Sanitation Services Project, the US\$12.5 million Microenterprise Project, and the US\$10 million Investment Guarantee Fund. Formed in 1994, the Holst Peace Fund (named in honor of the late Johan Jorgen Holst, the Norwegian Foreign Minister, who was instrumental in brokering the Oslo Agreement) served as a conduit for channeling donations from numerous foreign countries for West Bank and Gaza projects. The Holst Peace Fund was taken over in 2001 by the World Bank's Palestinian Economic Assistance and Cooperation Expansion ("PEACE") Facility. For a detailed description of the activities of the Holst Peace Fund, PEACE and other World Bank projects in the West Bank and Gaza see the World Bank website, <http://www.worldbank.org>.

such a heavy package, tying all three ropes around the package may provide support sufficient to lift the package and to bring peace.¹¹

Prior to the historic visit of the Egyptian President Sadat to Israel in 1977, peace between Israel and Egypt appeared to be impossible, because Egypt was not prepared to meet Israel's minimum political requirements — recognition of Israel and establishment of full diplomatic relations with it — while Israel was not prepared to meet Egypt's minimum political requirement — full withdrawal from the Israeli-occupied Sinai Peninsula. President Sadat's trip to Israel and his address to the Israeli Knesset in which he declared his readiness to recognize Israel and establish full peace with it, represented a quantum leap.¹² Israel reciprocated by fully meeting the primary Egyptian political requirement of full Israeli withdrawal from the entire Sinai Peninsula. This change in the Israeli position became possible due to the Egyptian willingness to accommodate Israel's security requirements by agreeing to demilitarize the entire Sinai Peninsula.

Two of the three major requirements of the parties were thus met, but a peace treaty was still extremely difficult to accomplish. The commitment to withdraw all of Israel's military bases and civilians from the Sinai within a relatively short period imposed an enormous economic burden on Israel. Similarly, being the first and the only Arab country to enter into full peace with Israel, Egypt had to pay a clear political and economic price too, because most of the other Arab countries considered Egypt's

11. This metaphor, used by the author in his presentation before the World Bank Conference, draws upon a similar metaphor used by the Israeli Prime Minister Rabin. See *supra* n.1. In describing his position in the context of the Israeli-Syrian negotiations, Rabin likened the inter-relationships between peace and security to a table with four legs: "When I spoke to the Americans I said the negotiations with Syria have to be a package. I compared it to a table with four legs: the depth of the withdrawal; the timetable; the interface between [an initial] limited withdrawal [and normalization]; and full normalization." *Interview with Prime Minister Rabin*, JERUSALEM POST, Sept. 5, 1994. Syrian Ambassador to the United States, Walid al-Moualem, who was the chief Syrian negotiator, accepted Rabin's metaphor as the formula for Israeli-Syrian peacemaking. See *Fresh Light on the Syrian-Israeli Peace Negotiations, An Interview with Ambassador Walid al-Moualem*, 26(2) J. OF PALESTINE STUDIES 81 (1997) [hereinafter *Fresh Light*].

12. See JOHN NORTON MOORE, THE ARAB-ISRAELI CONFLICT, VOLUME IV: THE DIFFICULT SEARCH FOR PEACE (1977-1988), PART ONE 77 (1991) (reprinting President Sadat's address).

step to be an act of betrayal.¹³ Thus, while Israel and Egypt reached an agreement on two important clusters of interests (political and security), they could not strike a deal. The price that each had to pay and the risks involved in making peace were too heavy for the expected gains. The U.S. government broke the deadlock with an offer of significant economic assistance to both parties.¹⁴ With all three “ropes” secured, the deal was sealed, peace was wrested from conflict, and the parties have maintained a peace, albeit a cold one, for more than two decades.

From the end of the 1973 October War, it took Egypt and Israel five years to conclude their peace treaty. Conversely, Syria, which also participated in the 1973 October War, and Israel, have failed to accomplish peace in the thirty years that passed since 1973. The reason for this stark difference in outcome is that the Israeli-Syrian calculus of incentives has so far been insufficient to make the peace equation work. Israel was not willing to accept the vision of a cold peace, and the very limited security arrangements offered by Syria were not an appropriate substitute for giving up the strategic Golan Heights.¹⁵ To make matters worse, the United States clarified to the two parties that the mood in Washington, at both the Administration and Congress, was not supportive of an economic aid package to Israel and Syria of a size even remotely resembling that provided to Israel and Egypt from the time in which they signed their Treaty of Peace.¹⁶ As a result, with very thin political and security ropes

13. Indeed, following the Israeli-Egyptian peace agreement, Syria severed diplomatic relations with Egypt, and the Arab League decided to relocate its headquarters out of Egypt. Egyptian interests throughout the Arab world were damaged.

14. Since the 1978 Camp David Accords, Israel and Egypt have been the first and second largest recipients of U.S. military and economic aid. Every year, these two countries receive an aggregate amount of approximately US\$5 billion. See Mark, *supra* n.8.

15. Concerned by the potential of a surprise attack, Israel asked Syria to substitute the Golan with security arrangements, such as a wide demilitarized area (equivalent to the demilitarization of Sinai under the Israeli-Egyptian Peace Treaty) and an early warning station. Syria objected, claiming that a demilitarized zone would leave its capital, Damascus, vulnerable to attack. Syria also rejected an Israeli early warning station on the Golan as an infringement on its sovereignty. Additionally, Syria objected to Israel's suggested full normalization in such spheres as commerce, transportation, and tourism — similar to the agreements signed with Egypt — arguing that it had no such agreements with its Arab neighbors and, therefore, saw no reason to have them with Israel. See *Fresh Light*, *supra* n.11.

16. See discussion of Camp David Accords, *supra* n.14.

and a non-existent economic assistance rope, the parties did not manage to lift the heavy peace package.

2. In the Event of Conflict Between Two or More Requirements, the Parties Must Strike an Appropriate Balance Between Conflicting Aims

In attempting to meet their political, security, and economic requirements, the parties have inevitably run into conflicts between seemingly clashing goals. An attempt to strike an appropriate balance between conflicting aims would seem necessary for the parties to reach accord.

Some inconsistencies between conflicting requirements are so fundamental that they are insolvable. Most conflicts, however, can be resolved on the basis of "give and take." Such trade-offs may be accomplished narrowly within the perimeter of each cluster of interests,¹⁷ or across two or more clusters of interests.¹⁸ Conflicts have most often surfaced between security interests (normally those of Israel) and political¹⁹ or economic interests (normally of the Arab side). Those interests, however, are not necessarily mutually exclusive. Some Israeli politicians have thus supported the notion that, in some cases, accommodating the economic interests of the Arab side on account of the short-term Israeli security interests, may, in the long run, contribute to the Israeli security interests.²⁰

A very interesting argument on that issue took place in the Israeli Cabinet in the beginning of 1996 between Shimon Peres, then the Israeli Prime Minister, and a high-ranking Israeli intelligence officer. At that time, the Israeli and Syrian delegations

17. For instance, Israel and Jordan agreed to reciprocal exchanges of sovereign territories along their international border.

18. For instance, Egypt agreed to flexibly accommodate Israel's requirements for security arrangements, provided that Israel accepted Egypt's political requirement of full Israeli withdrawal.

19. See e.g., *Fresh Light*, *supra* n.11 (discussing the Syrian claim that an early warning station in the Golan Heights would infringe upon Syria's sovereignty).

20. In 1970-1971, Moshe Dayan, then the Israeli Minister of Defense, suggested that Israel unilaterally withdraw its forces from the Suez Canal to allow Egypt to reopen the Canal, which had been closed since the 1967 Six-Day War, and rebuild the destroyed Egyptian cities along the Canal. Dayan believed that accommodating Egyptian economic interests would also provide a disincentive to an Egyptian war against Israel, thus contributing to Israel's security interests. Dayan's initiative, however, had to wait for the 1973 October War, two years later, with its thousands of casualties on both sides. Only then was this idea accepted. See QUANDT, *supra* n.3, at 122-29.

were negotiating at the Wye Plantation, near Washington, D.C., and the Syrian delegation objected to many of the Israeli-proposed security arrangements. According to a story leaked to an Israeli newspaper, Peres, apparently prepared to consider favorably the more limited Syrian view of security arrangements, stated at the Cabinet meeting as follows: "There is the economy and there is the Army, and only a State which goes toward economy will win. Between ten bunkers and ten hotels, ten hotels are also a defense. I am for the European model which emphasizes economies."²¹

The Director of the Israel Defense Forces Intelligence Analysis Division, who also attended this Cabinet meeting, reacted as follows: "I don't accept this. A hotel is important as long as there is no war, but, when the other side decides to go to war, the bunkers will decide more than the hotels . . ."²²

The question of "hotels" versus "bunkers" was particularly relevant to the negotiations between Israel and the PLO leading up to the Agreement on the Gaza Strip and the Jericho Area.²³ At that time, different negotiators from each side were simultaneously negotiating the terms of two parts of this Agreement. One group was negotiating the security provisions in Cairo, Egypt,²⁴ while the other group was negotiating the economic provisions in Paris, France.²⁵ From an objective viewpoint, one

21. HA'ARETZ, Jan. 29, 1996. See also *Peres clashes with army general over peace with Syria*, AG. FR. PRESSE, Jan. 29, 1996; *Syria's election impact*, JERUSALEM POST, Feb. 1, 1996; *Prosperity as peace ball*, JERUSALEM POST, Feb. 9, 1996.

22. HA'ARETZ, *supra* n.21. The author does not agree with either of these two positions. In the author's view, the question is not whether there should be ten bunkers and not a single hotel, or ten hotels and not a single bunker. One should recognize that building hotels contributes indirectly to security, because hotels provide jobs and attract foreign investments, which all provide incentives to support peace. In the same vein, building bunkers contributes indirectly to economic prosperity, because, without bunkers, opposition forces who wish to undermine peace will have more freedom of action, which will drive tourists away and, in turn, will lead to the inevitable demise of hotels. In sum, the real question is how to appropriately mix hotels and bunkers while ensuring that they support, rather than disrupt, each other.

23. Gaza Strip and Jericho Agreement, May 4, 1994, Israel-PLO, *reprinted in* 33 I.L.M. 622 (1994) [hereinafter Gaza-Jericho Agreement].

24. These security provisions were included in Annex I to the Gaza-Jericho Agreement, entitled "Protocol Concerning Withdrawal of Israeli Military Forces and Security Arrangements" [hereinafter Security Annex].

25. The economic provisions of the Gaza-Jericho Agreement were included in the Protocol on Economic Relations, Apr. 29, 1994 [hereinafter Paris Protocol]. The Paris Protocol is attached as Annex IV of the Gaza-Jericho Agreement and constitutes an integral part thereof. See Paris Protocol, art. 1(2).

can imagine that there would be inherent conflicts between the security requirements that the Israeli government was primarily attempting to meet, and the economic requirements that the PLO was primarily attempting to meet. That is, the complete freedom of movement required for Palestinian economic growth, at least partially conflicts with security closures, road blocks, or other similar measures required to allay Israeli security concerns. However, perhaps because neither negotiating team for the security provisions of the Gaza-Jericho Agreement was in full communication with its national counterpart in the Paris Protocol negotiations, the parties failed to address, much less strike a balance between, these competing aims.

The failure of each side to address the requirements logically at odds with the requirements of its negotiating partner is apparent on the face of the Gaza-Jericho Agreement. Central provisions of the Security Annex and the Economic Annex (the Paris Protocol) of the Agreement conflict in significant ways. Most importantly, the Paris Protocol guarantees freedom of movement among the West Bank, Gaza, and Israel for labor,²⁶ agricultural produce,²⁷ and industrial goods.²⁸ The Security Annex, on the other hand, is primarily concerned with the Israeli security requirements and includes many provisions allowing Israel to prevent entry of Palestinians to Israel.²⁹

The author, who was then a member of the Israeli delegation negotiating the Gaza-Jericho Agreement in Cairo, Egypt, recalls how he discovered that discrepancy just a few days before the signing of the Gaza-Jericho Agreement.³⁰ This discovery led to hectic phone calls among Cairo, Paris, Jerusalem, and Tunis (the seat of the PLO headquarters before it relocated to Gaza), intended to resolve the discrepancy. The agreed solution (in the case of conflict between security and economic considerations, the security considerations would prevail) was inserted in Article XIII of the Gaza-Jericho Agreement, which reads:

26. *Id.* art. VII.

27. *Id.* art. VIII.

28. *Id.* art. IX.

29. *See e.g.*, Gaza-Jericho Agreement, *supra* n.23, art. VIII(1) and Security Annex, *supra* n.24, art. VII(1)(c).

30. The Paris Protocol was executed in Paris on April 29, 1994, a few days before the signing of the Gaza-Jericho Agreement in Cairo, on May 4, 1994. The Paris Protocol was forwarded to the author for review only hours before it was signed.

The economic relations between the two sides are set out in the Protocol on Economic Relations signed in Paris on April 29, 1994 and the Appendices thereto, certified copies of which are attached as Annex IV, *and will be governed by the relevant provisions of this Agreement and its Annexes.*³¹

This technical resolution of a textual discrepancy does not necessarily mean that the parties also managed to strike the right balance between the competing economic and security requirements. While we cannot know whether or not the parties' failure to strike a balance between competing aims was responsible for the subsequent violence, one lesson learned is that a greater effort is required in this respect.

3. All Three Requirements Must Be Addressed Simultaneously and not Sequentially

Not only must the parties address all three requirements in their negotiations, but they must address them simultaneously. Again, viewing peace negotiations as an attempt to lift a heavy package, it is not enough to tie one thin rope after another. Any attempt to lift the package must intertwine all three ropes available — political, security, and economic — to lift the package.

Attempts to strike a peace deal have often failed in the Middle East even though the bargain offered was quite balanced in terms of its substance. This failure has resulted from the fact that one party, and often both, have sought to create a timeline for the performance of the parties' various commitments in which the other party first had to complete performance of its obligations and only then, would the first party perform. Typically, Israel has demanded that, before it takes the irreversible step of withdrawal from a territory, the other side must first demonstrate its commitment to the deal by exchanging ambassadors, beginning trade, etc. The Arab side, typically, presented a diametrically opposed demand according to which, before friendly relations could be established, Israel must first complete its withdrawal from the occupied territory.

This dichotomy has often been resolved in the Middle East peace negotiations by subdividing each of the parties' significant commitments into increments and creating a schedule of performance in which a balance was accomplished not only with

31. Gaza-Jericho Agreement, *supra* n.23, art. XIII (emphasis added).

regard to the relative weight of the parties' "give and take," but also with regard to the pace of performance.³² In creating a synchronized schedule of performance of the parties' commitments, it is extremely important to ensure that the provision of economic assistance coincides with the other elements of performance, and that it is not phased in well into the future. Peace treaties can be sustained only if they receive popular support on an ongoing basis. Common people normally do not read the text of a peace treaty, but rather, make up their mind based on a simple test: "What's in it for me?" If the economic situation improves after a peace treaty is concluded, there is a good chance that there will be popular support for peace. Conversely, if the economic situation remains unchanged or even worsens, as was the case in the West Bank and Gaza, the package will not hold for long.

4. After the Parties Reach a Tentative Peace, They Must Nourish the Three Requirements to Sustain the Peace

As important as it is to adhere to the three laws discussed above in order to strike a deal, it is no less important to continue to nourish the political, security, and economic requirements of the parties for quite a while to prevent the fragile peace reached between the former enemies from collapsing. Before real peace is fully consolidated, the disappearance of one of the ropes supporting the package, for instance as a result of a violation by one party of a fundamental treaty provision or a dramatic change of circumstances, may cause the other ropes to get untangled and the peace package to fall down and crash. This explains why, twenty-four years after Israel and Egypt signed their peace treaty, the United States still continues to support these countries with very generous economic assistance. Similarly, once conditions change and peace becomes possible among Israel, Lebanon, a Palestinian State, and Syria, the world community will need to help put together a long-term plan for economic support and reconstruction, especially for the Palestinians.

32. That was one of the table's legs in Rabin's metaphor — the synchronization between Israel's withdrawal and the normalization process. See *Interview with Prime Minister Rabin*, *supra* n.11.

II. *THE QIZ INITIATIVE*

As noted above, the U.S. government has long been involved in the negotiations in the Middle East, including by providing significant economic aid to parties engaged in negotiations. We have seen just how important the U.S. economic aid can be — American economic support can literally make or break the parties' efforts to reach accord. One method of economic assistance that has been particularly successful in reaching and maintaining peace accords is the relatively recent and very innovative QIZ initiative.

Begun in 1996, the QIZ initiative extends the same kind of free access to the U.S. market for goods produced inside QIZs as it does to Israeli goods under the U.S.-Israel Free Trade Area Agreement ("U.S.-Israel FTA"), provided that the goods are made up of components originating in both Israel and its neighbors.³³ The QIZs consist of areas along the borders of Israel and its former enemy countries.

A. *Rationale of the QIZ Initiative*

The QIZ initiative began to take shape in 1994-1995. It resulted from the strong conviction of both the Congress and the Clinton Administration that the economic aid requirements of the West Bank and Gaza in the post-Oslo Agreement stage, and Jordan in the post Israel-Jordan Treaty of Peace stage, well exceeded the significant, yet insufficient, funds that the United States was able to provide. Both the Congress and the Administration were, therefore, looking for ways in which they could assist the economies of the West Bank, Gaza, and Jordan without having to raise the annual foreign assistance level.

A separate problem arose with regard to exports of the West Bank and Gaza products to the United States as a result of inconsistencies among the various applicable export regimes. Thus, the Paris Protocol, which established a Customs Union among Israel, the West Bank, and Gaza,³⁴ allowed Palestinian and Israeli products to be shipped throughout the territories of Israel, the West Bank, and Gaza, without the need to obtain a license or pay

33. U.S.-Israel Free Trade Area Agreement, April 22, 1985, *reprinted in* 24 I.L.M. 645 (1985) [hereinafter U.S.-Israel FTA].

34. See Oren Gross, *Mending Walls: The Economic Aspects of Israeli-Palestinian Peace*, 15 AM. U. INT'L L. REV. 1539, 1598 (2000).

customs duties, with a unified export/import licensing and customs regime applying to the outer envelope of these territories.³⁵ Under the U.S.-Israel FTA, however, only Israeli products were accorded free access to the U.S. market,³⁶ while Palestinian products were denied such free access. More importantly, until the West Bank and Gaza obtained economic autonomy through the Oslo process, products of these areas were covered on a *de facto* basis under the U.S.-Israel FTA, a practice that was subsequently stopped.³⁷ To prevent the Palestinians from being penalized by that reality, the U.S. government extended preferential tariff rates to Palestinian goods under the Generalized System of Preferences ("GSP")³⁸ in early 1995. That preferential treatment was far from sufficient, as it did not cover textiles and agricultural products, the two most important Palestinian export products. Moreover, Congress did not reauthorize the GSP regime in 1996.³⁹ It thus became clear that the U.S. government had to close the triangle by forming a U.S.-Palestinian facet to supplement the U.S.-Israeli facet (the U.S.-Israel FTA) and the Israeli-Palestinian facet (the Paris Protocol).

Initially, the U.S. government considered entering into an FTA Agreement with the PLO. However, due to various legal and practical considerations, that approach was replaced with a decision that an FTA regime should be created for the West Bank and Gaza through unilaterally extending, by legislation, the Israel-U.S. FTA arrangements to also cover the West Bank and Gaza.

While the considerations discussed above led to granting preferential treatment to Palestinian products originating from any place in the West Bank and Gaza, the Administration and Congress took a more limited approach to Jordanian products. With regard to the latter, the QIZ initiative was formed, limiting the scope of the preferential treatment to products that were manufactured in jointly-administered industrial zones along the Israeli-Jordanian border. This unique feature of the QIZ initia-

35. *Id.*

36. U.S.-Israel Free Trade Area Implementation Act of 1985, 19 U.S.C. Sec. 2112 [hereinafter U.S.-Israel FTA Implementation Act].

37. See Mel Levine, *Palestinian Economic Progress Under the Oslo Agreements*, 19 *FORDHAM INT'L L.J.* 1393, 1413-1414 (1996).

38. 19 U.S.C. Secs. 2461-66.

39. *Id.*; see Levine, *supra* n.37.

tive, as well as the permissible accumulation of Israeli and Jordanian content for the purpose of calculating the QIZ rules of origin,⁴⁰ were designed to achieve two independent objectives. First, free access to the U.S. market for Jordanian goods promoted foreign and local investments in Jordan, which translated into jobs and profits for the Jordanian population. Second, by rewarding Jordanian businesses that cooperated with Israeli businesses, the QIZ initiative helped cement good neighborly relations between Jordan and Israel at a very crucial time when these two countries were transitioning from war to peace.

Even though the QIZ initiative was designed to support the Jordanian and Palestinian peace accords, once the QIZ mechanism was designed, Congress and the Administration decided to add Egypt to the short list of benefiting countries, even though the Egypt-Israeli Treaty of Peace was accomplished more than fifteen years earlier, likely in order to reward Egypt for the support it had provided in the completion of the Oslo Agreements.

Most of the considerations discussed above were addressed in close consultation among the relevant parties. Some of them are reflected in the Congressional hearings that accompanied the passage of the necessary legislation. Thus, in a hearing leading up to the 1996 passage of the QIZ initiative held by the U.S. Senate Foreign Relations Committee, the Subcommittee on Near Eastern and South Asian Affairs, Senator Brown noted:

As everyone in this room is keenly aware, a very high portion of this Nation's foreign assistance budget is spent in the Middle East. Ensuring a lasting peace in that part of the world has our utmost attention and our highest priority. It is essential that our priority be reflected in economic development in the Gaza Strip. If it is not, if we fail here, it is likely that our further efforts in the region to bring about peace will fail as well. On the other hand, if we can succeed in Gaza, it is likely that this success will bring about renewed efforts to ensure a lasting peace in the region.⁴¹

40. See Agreement on Irbid Qualifying Industrial Zone, art. II(c), *as amended*, Nov. 16, 1997, Jordan-Isr.. The Agreement is reproduced by the Jordan Export Development & Commercial Centers Corporation ("JEDCO") and is available at <http://www.jedco.gov.jo/>.

41. *Economic Development and U.S. Assistance in Gaza/Jericho*, *supra* n.9. While not directly related to the QIZ initiative, the hearing was indicative of the mood on the Capitol Hill toward U.S. economic assistance in the Middle East. *Id.*

In a hearing to accompany H.R. 2371, which would have amended the U.S.-Israel FTA Implementation Act and provided for duty-free access to goods produced in QIZs a year earlier than the bill that was subsequently adopted by Congress (H.R. 3074), the U.S. House Ways and Means Committee noted that the bill contained the QIZ provision at the request of the Clinton Administration. The Committee also noted that it “believes that reducing tariffs in these [qualifying industrial] zones is important to the peace process, will increase employment, and will stimulate the economy of the region.”⁴²

In its Report to accompany H.R. 3074, the House Ways and Means Committee noted that the QIZ provisions would “offer to goods from the West Bank, the Gaza Strip, and qualifying industrial zones (located between Israel and Jordan or Israel and Egypt) the same tariff treatment as is offered to Israel.”⁴³ During the floor debate on H.R. 3074, Congressman Shaw stated:

The Israelis and Palestinians want peace for their people, security for every citizen and hope that they can peacefully co-exist. It is very important for the United States and this Congress to show their collective will that they will do all they can do to further the peace process. The passage of this bill will send a very clear signal to the international community that we support normalized relations between the Israelis and the Palestinians. The provisions of this bill will strengthen the Israeli and Palestinian relation by providing economic and employment relief to that area and it will help the establishment of a Palestinian [S]tate.⁴⁴

Likewise, a U.S. Senate Committee on Finance Report accompanying H.R. 3074 noted that “[t]he Committee believes that providing duty free treatment to imports from the West Bank, the Gaza Strip, and qualifying industrial zones is important to promoting the peace process in the Middle East, increasing employment and stimulating the region’s economy . . .”⁴⁵

42. See *Trade Agreements Authority Act of 1995: House Ways and Means Committee Report*, 104th Cong. 2 (1995). As to the content of H.R. 3074, see the immediately following paragraphs, as well as *infra* Part III.B.

43. See *Extension of Free Trade Benefits to the West Bank and Gaza Strip: House Ways and Means Committee Report*, 104th Cong. (1996).

44. *Extension of Free Trade Benefits to the West Bank and Gaza Strip*, 142 (48) CONG. REC. H3412, 3413 (Apr. 16, 1996).

45. *Extension of Free Trade Benefits to the West Bank and Gaza Strip et al.*, H. REP. NO. 104-270, at 3 (May 13, 1996).

It is apparent from the testimony accompanying the passage of H.R. 3074, that the intent of the U.S. Congress in extending free-trade benefits to products of the West Bank and Gaza, as well as products of the QIZs, was to provide economic incentives for the creation of joint ventures among Egyptians, Israelis, Jordanians, and Palestinians, that ensure jobs and opportunities for the local population. The message is clear — countries that do business together have more of an incentive to resolve political, economic, and security differences through peaceful negotiations.

B. *Mechanics of the QIZ Initiative*

Pursuant to the U.S.-Israel FTA Implementation Act, almost all Israeli products are entitled to entry into the United States free of customs duties.⁴⁶ The U.S. Congress amended the U.S.-Israel FTA Implementation Act to authorize the U.S. President to proclaim duty-free treatment not only for Israeli products, but also for products from the West Bank, Gaza, and certain QIZs.⁴⁷ Specifically, H.R. 3074 amended the U.S.-Israel FTA Implementation Act by adding a new Section 9(a), “Elimination or Modification of Duties,” which reads, in relevant part:

The President is authorized to proclaim elimination or modification of any existing duty as the President determines is necessary to exempt any article from duty if

(1) that article is wholly the growth, product, or manufacture of the West Bank, the Gaza Strip, or a qualifying industrial zone or is a new or different article of commerce that has

46. U.S.-Israel FTA Implementation Act, *supra* n.36. See generally Yair Baranes, *The Motivations and the Models: A Comparison of the Israel-U.S. Free Trade Agreement and the North American Free Trade Agreement*, 17 N.Y.L. SCH. J. INT’L & COMP. L. 145 (1997).

47. See Act to Amend the U.S.-Israel Free Trade Area Implementation Act of 1985 to Provide the President with Additional Proclamation Authority with Respect to Articles of the West Bank or Gaza Strip or a Qualifying Industrial Zone, H.R. 3074, P.L. 104-234, 110 Stat. 3058 (Oct. 2, 1996). Prior to enacting the amendment to the U.S.-Israel FTA Implementation Act, the U.S. Congress had previously considered similar amendments. A year earlier, the U.S. House of Representatives Committee on Ways and Means had recommended that H.R. 2371 pass. See Trade Agreements Authority Act of 1995, H.R. REP. NO. 104-285, pt. 1 (Oct. 20, 1995). Section 7 of H.R. 2371 would have provided the President with similar proclamation authority to modify tariffs on products from the West Bank, Gaza, and QIZs. *Id.* at 20. In that version of the amendment, the origin of goods covered by the amendment would be deemed to be Israel. See *id.* at 23 (citing to proposed, new Section 9 of the U.S.-Israel FTA Implementation Act of 1985).

been grown, produced or manufactured in the West Bank, the Gaza Strip, or a qualifying industrial zone;

(2) that article is imported directly from the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone; *and*

(3) the sum of

the cost or value of the materials produced in the West Bank, the Gaza Strip, Israel or a qualifying industrial zone, plus

the direct costs of processing operations performed in the West Bank, the Gaza Strip, Israel, or a qualifying industrial zone

is not less than 35 percent of the appraised value of the product at the time it is entered into the United States.

For purposes of determining the 35 percent content requirements contained in paragraph (3), the cost or value of materials which are used in the production of an article in the West Bank, the Gaza Strip, or a qualifying industrial zone, and are the products of the United States, may be counted in an amount up to 15 percent of the appraised value of the article.⁴⁸

Section 9(e), in turn, defines a “qualifying industrial zone” as any area that:

(1) encompasses portion of the territory of Israel and Jordan or Israel and Egypt;

(2) has been designated by local authorities as an enclave where merchandise may enter without payment of duty or excise taxes; and

(3) has been specified by the President as a qualifying industrial zone.⁴⁹

The new Section 9 of the U.S.-Israel FTA Implementation

48. U.S.-Israel FTA Implementation Act, *supra* n.36, Sec. 9(a). The Act further defines a “new or different article of commerce” as an article that has been “Substantially transformed into an article having a new name, character, or use.” *Id.* Sec. 9(a)(2). The term “substantial transformation” is a term of art used in customs law parlance that connotes an article or components of an article from one country, which have been so transformed by manufacturing or assembly operations in another country, that they cease being the old article or components of the article and become a new article, originating in the country of manufacture or assembly. Substantial transformation determinations are heavily fact-intensive and are made by the U.S. Customs Service (“Customs”) on a case-by-case basis.

49. *Id.* Sec. 9(e). The President has authorized the U.S. Trade Representative to specify particular industrial zones under Sec. 9(e) as QIZs.

Act authorizes goods produced outside of Israel to enjoy the same duty-free access granted to goods produced in Israel, if the goods are wholly the growth, product, or manufacture of the West Bank, Gaza, or a QIZ.⁵⁰ As noted in Section 9(e), the process of establishing a QIZ requires that the Israeli and the Jordanian or the Israeli and the Egyptian authorities agree to dedicate the territory along their respective borders to serve as a jointly operated industrial park.⁵¹ Next, the local Israeli and Jordanian or Israeli and Egyptian authorities must negotiate a bilateral agreement that establishes how the parties wish to divide the 35% minimum content requirements set by the U.S. law.⁵² Once a bilateral agreement has been reached, the local authorities designate the industrial park as an “enclave where merchandise may enter without payment of duty or excise taxes.”⁵³ Finally, the parties submit their proposed QIZ to the U.S. Trade Representative for a determination of whether the industrial park will be designated as a QIZ.⁵⁴

The incentives for foreign and local investment in these newly extended regions are plain — the West Bank, Gaza, and QIZs are magnets for companies that want duty-free access to the U.S. market. For example, if a company sets up a manufacturing facility of consumer electronic goods in a QIZ along the Jordanian-Israeli border, it can import parts and components

50. The 1996 amendments to the U.S.-Israel FTA Implementation Act authorized the President to accord duty-free treatment to goods from the West Bank, Gaza, or QIZs. President Clinton so authorized duty reductions via Presidential Proclamation in November 1996 by modifying the Harmonized Tariff Schedule of the United States (“HTSUS”). See Proclamation No. 6955, 61 Fed. Reg. 58, 761-58, 765 (1996).

51. See U.S.-Israel FTA Implementation Act, *supra* n.36, Sec. 9(e)(1) (requiring that a QIZ encompass portions of the territory of Israel and Jordan or Israel and Egypt).

52. Jordan and Israel agreed on a mechanism for dividing the 35% minimum content between Jordanian and Israeli manufacturers according to one of the following two ways:

(1) Of the 35% minimum QIZ content, at least one-third (11.7%) must be added by a Jordanian manufacturer in the QIZ, and 8% (or 7% for high-tech products) by an Israeli manufacturer(s). The remainder of the 35% content (namely, 15.3%) may be fulfilled by production in the QIZ, the West Bank, Gaza, Israel, or the United States;

(2) Alternatively, Jordanian and Israeli manufacturers must each maintain at least 20% of the total production cost of the QIZ-produced goods.

See Agreement on Irbid Qualifying Industrial Zone, *supra* n.40, art. II(c)

53. See U.S.-Israel FTA Implementation Act, *supra* n.36, Sec. 9(e)(2).

54. *Id.* Sec. 9(e)(3) (requiring that the area designated by local authorities be “specified by the President [acting through the U.S. Trade Representative] as a qualifying industrial zone”).

from any country in the world into the QIZ and assemble those parts and components into a finished electronic product. As long as those parts and components undergo a “substantial transformation”⁵⁵ and the 35% minimum value requirement is met,⁵⁶ the finished product is eligible for duty-free access into the U.S. market.⁵⁷ On the other hand, if the parts and components were assembled in their country of origin, the finished product would be ineligible for duty-free access under the U.S.-Israel FTA Implementation Act.⁵⁸ Because duty-free treatment often provides for savings of three-to-five percent or more of the

55. See *id.* Sec. 9(a)(2); see also discussion of “substantial transformation,” *supra* n.48.

56. The 35% minimum value requirement in Section 9(a)(3) is found in most agreements that the United States signs with free-trade partners or other beneficiary countries to ensure that products of other countries are not merely trans-shipped through partner or beneficiary countries to the United States. For example, the Generalized System of Preferences (“GSP”) program authorizes duty-free entry of goods that are the growth, product, or manufacture of certain listed beneficiary developing countries. See 19 U.S.C. Secs. 2461-66. The GSP program requires a minimum value requirement of 35% to reap the benefits of the GSP duty-free treatment. In the case of the QIZ initiative, note that Section 9(a) allows part of the 35% minimum value requirement in the case of a QIZ to consist of goods of U.S. origin. Because goods of U.S. origin may make up to 15% of the value of an imported good, in effect only 20% of the appraised value of the imported article must actually be attributable to the QIZ, the West Bank, Gaza, or Israel.

57. Goods that enter the United States under the QIZ initiative may be shipped either from Jordan or Israel. Importers must declare the origin of the imported goods as either “Jordan” or “Israel” and must indicate on the entry documents that the goods are the growth, product, or manufacture of a QIZ. Note that the rules of origin for textile products of QIZs differ from the rules of origin for other products. The rules of origin for textiles are found in Section 102.21 of the Customs Regulations, or 19 C.F.R. Sec. 102.21. These textile rules are based on the tariff shift, or on the location where the textile product was wholly assembled. Importers of goods that enter the United States under duty-free access accorded to the West Bank or Gaza must declare the origin as “West Bank/Gaza.” See *Country of Origin Marking of Products from the West Bank or Gaza*, 62 Fed. Reg. 12269 (Mar. 14, 1997) (noting that the U.S. State Department considers the West Bank and Gaza to be “one area for political, economic, legal and other purposes”); see also *Country of Origin Marking of Products from the West Bank or Gaza*, 60 Fed. Reg. 17607 (Apr. 6, 1995) (requiring that goods be marked as either the product of “West Bank” or of “Gaza Strip”).

58. The finished product may be eligible for duty-free access to the U.S. market under other free-trade arrangements or beneficiary programs into which the United States has entered. For example, if the parts and components were substantially transformed in Jordan outside a QIZ, the finished product may be eligible for duty-free treatment under the U.S.-Jordan FTA Implementation Act. See P.L. 107-43, 115 Stat. 243 (Sept. 29, 2001); see also 19 U.S.C. Sec. 2112. Nonetheless, the QIZ initiative may still offer incentives for production inside the QIZ over Jordan, because the U.S.-Jordan FTA Implementation Act provides for staged duty reductions for many products.

value of the imported goods, the benefits of shifting production or assembly of goods to a QIZ are tangible and immediate—manufacturing capability inside a QIZ are a boon to businesses that want to ship to the United States.

C. *Success of the QIZ Initiative on the Ground*

The success of the QIZ initiative, even in tense current circumstances, validates the notion that U.S. economic assistance in the Middle East peace process can serve as an effective means of securing and maintaining peace on the ground. Despite the violence in the Middle East, the QIZs are functioning smoothly and are continuing to provide their communities with hope and opportunity.⁵⁹

There are presently eleven industrial parks along the Jordanian-Israeli border that have been designated by the U.S. Trade Representative as QIZs.⁶⁰ Since their establishment, the Jordan Industrial Estates Corporation (“JIEC”) has estimated that the eleven QIZs have created 20,000 new jobs, have attracted millions of dollars of capital investment to Jordan, and have more than doubled Jordan’s exports to the United States.⁶¹

59. A 2001 JORDAN TIMES article addressing the issue of whether the Jordanian expectations for the “fruits of peace” had been fulfilled, referred to the Jordanian QIZs as “the biggest ‘fruit of peace’ so far,” adding that:

Employing 14,000 Jordanians, the QIZs have developed massively this year in spite of regional violence. Official figures show that exports from the QIZs over the first half of 2001 reached JD125 million, and projections suggest that the JD250 million mark will be crossed by year-end . . . Estimates also suggest the QIZs could create 100,000 jobs and attract up to U.S.\$10 billion in foreign investments over the next 10 years.

Sawalha, *supra* n.7.

60. The eleven designated QIZs are: (1) Irbid Qualifying Industrial Zone. *See* 63 Fed. Reg. 12572 (Mar. 13, 1998), *expanded by* 64 Fed. Reg. 13623 (Mar. 19, 1999); (2) Gateway Projects Industrial Zone. *See id.*; (3) Al-Kerak Industrial Estate. *See* 64 Fed. Reg. 56015 (Oct. 15, 1999); (4) Ad-Dulayl Industrial Park. *See id.*, *expanded by* 66 Fed. Reg. 32660 (June 15, 2001); (5) Al-Tajamouat Industrial City. *See* 64 Fed. Reg. 56015 (Oct. 15, 1999); (6) Jordan Cyber City Co. . *See* 65 Fed. Reg. 64472 (Oct. 27, 2000); (7) Aqaba Industrial Estate. *See id.*; (8) Mushatta International Complex. *See* 65 Fed. Reg. 77688 (Dec. 12, 2000); (9) El Zay Ready Wear Manufacturing Company Duty Free Area. *See id.*; (10) Al Qastal Industrial Zone. *See id.*; and (11) Zarqa Industrial Zone. *See* 66 Fed. Reg. 32660 (June 15, 2001). There are no QIZs along the Israeli-Egyptian border primarily due to Egypt’s current disinclination to enhance economic cooperation with Israel.

61. The Jordan Industrial Estates Corporation (“JIEC”) was established by the government of Jordan to encourage the establishment of industrial projects in Jordan. It is

D. Future of the QIZ Initiative

The QIZ initiative has enjoyed great success on the ground, and the United States should be guardedly optimistic that the extension of the QIZ concept to other borders in the Middle East could encourage parties to resolve differences through political negotiations. Due, in large part, to the success of the QIZ initiative, the U.S. Congress is presently considering a second amendment to the U.S.-Israel FTA Implementation Act that would authorize the President to also extend duty-free treatment to goods produced in QIZs to be established in Turkey.⁶² Significantly, not only is Turkey not a former enemy of Israel, but it does not even have a common border with Israel. Yet, the U.S. Congress has shown interest in promoting economic cooperation between Israel and Turkey, through the extension of the QIZ initiative to Turkey, likely because Turkey is considered an important, pro-Western Middle Eastern country that is friendly with both Israel and the United States.

Although the bill, discussed below, did not reach the floor in the 107th Congress, supporters believe that it could be re-introduced in the 108th Congress. Specifically, Section 2002 of H.R. 5385 would have amended Section 9(e)(1) of the U.S.-Israel FTA Implementation Act by “striking ‘Israel and Jordan’ and inserting ‘Israel and Turkey, Israel and Jordan.’”⁶³ The House bill contained several notable exceptions for goods from Israel-Turkey QIZs that would be eligible for free-trade benefits. Specifically, Section 2002 stated that:

(b) Section 9 of the U.S.-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. § 2112), is amended . . .

(2) by adding at the end the following new subsection:

(f) Articles That May Not Be Exempted From Duty

The President may not proclaim under subsection (a) elimination or modification of any existing duty with respect to any article

charged with licensing industrial parks for duty, fee, and tax exemptions under Jordanian law and multilateral agreements.

62. See Miscellaneous Trade and Technical Corrections Act of 2002, H.R. 5385, Sec. 2002 (2002) (engrossed as agreed to or passed by the House). In addition, H.R. 5002 was introduced as a stand-alone bill to provide for identical extension of QIZ benefits to Turkish-Israeli industrial parks. It was introduced and referred to the House Committee on Ways and Means on June 24, 2002. This bill was eventually subsumed into the Miscellaneous Trade and Technical Corrections Act of 2002, H.R. 5385.

63. *Id.* Sec. 2002(a).

that is wholly the growth, product, or manufacture of a qualifying industrial zone that encompasses portions of the territory of Israel and Turkey or is a new and different article of commerce that has been grown, produced, or manufactured in a qualifying industrial zone that encompasses portions of the territory of Israel and Turkey, *if such article is within any of the following categories of import-sensitive articles:*

(1) *Textile and apparel articles* that were not eligible articles for purposes of title V of the Trade Act of 1974 on January 1, 1994, as such title was in effect on such date.

(2) *Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel* that were not eligible articles for purposes of title V of the Trade Act of 1974 on January 1, 1995, as such title was in effect on such date.

(3) Any other article that the President determines to be *import-sensitive*.⁶⁴

Exclusions of textile, apparel, and leather products from free-trade benefits under the Israel-Turkey QIZ initiative resulted from protectionist pressure from domestic industry interest groups.⁶⁵ Domestic steel producers groups have also persuaded several congressional members to argue for excluding steel products from the extension of free trade benefits under the QIZ program.

H.R. 5385 did not pass in the 107th Congress due to the inability of the U.S. Senate to consider the bill in its "lame duck" session. Because of the importance of numerous provisions in the Miscellaneous Trade and Technical Corrections Act of 2002, a substantially similar bill containing the Israeli-Turkish QIZ initiative may be introduced soon after the 108th Congress convenes in January 2003. The details of the Turkey QIZ initiative may change somewhat, but many congressional members expect any such bill to contain a provision for the extension of QIZ free-trade benefits to Turkey.

64. *Id.* at Sec. 2002(b) (emphasis added).

65. For example, the American Textile Manufacturers Group ("ATMI"), a national trade association of U.S. textile manufacturers, opposed extending the QIZ program to Turkish textiles. See ATMI, 50 *TEXTILE TRENDS: THE WEEKLY WASHINGTON REPORT FOR ATMI MEMBERS*, no. 24 (June 24, 2002), available at <http://www.atmi.org>.

CONCLUSION

The novel QIZ initiative validates the old adage that necessity is the mother of all inventions. Born out of the need to quickly support the economies of Middle Eastern countries involved in peacemaking at a time in which the U.S. foreign assistance program could not be significantly expanded, the QIZ initiative has had two major accomplishments: (1) it has successfully promoted foreign investments in the region; and (2) it has helped consolidate good neighborly relations between former enemies.

The new Turkish QIZ initiative demonstrates that the QIZ concept may be extended to additional locations in the Middle East, as part of the overall U.S. economic assistance to support the Middle East peace process.