



Governing Council
Twenty-First Session
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Agenda Item 13

THE ESTABLISHMENT OF AN IFAD FUND FOR GAZA AND THE WEST BANK

Introduction

1. The Declaration of Principles (DOP) (the Oslo Agreement), signed on 13 September 1993, represents a major milestone in establishing peace between Israel and the Palestinian people in the Gaza Strip and the West Bank after almost 30 years of Israeli military occupation. The first phase of implementation involved the transfer of jurisdiction over most of the Gaza Strip and all of the municipality of Jericho to the Palestinian Authority (PA). During the second phase, the majority of the remaining West Bank towns were transferred to PA jurisdiction in December 1996. The next phase of the peace process will provide for further Israeli redeployment from rural areas of the West Bank and the creation of a "safe passage" corridor for movement between the Gaza Strip and the West Bank. The status of Jerusalem is to be left until the "final status" negotiations.
2. The complexity of the Oslo Agreement and the various protocols attached to it provide a unique situation in which the Gaza Strip and the West Bank is not recognized as a sovereign State but the PA has full or partial jurisdiction over parts of it. The parts under full jurisdiction, known as Area A, now comprise the Gaza Strip and all of the West Bank municipalities except the 20% of Hebron that is still under full Israeli jurisdiction. Area B includes about 100 separate areas of rural land, delineated on the Oslo Agreement maps, in which the PA has jurisdiction over civil administration but the Israeli police and military have jurisdiction over security. The remaining parts of the territory are designated as Area C and include rural land occupied by Palestinians, Israeli settlements and Israeli military zones. The Israeli authorities remain in full control of Area C. Jerusalem was annexed by Israel in 1967 and Palestinians who are not resident in the city cannot enter without special permits. Palestinians also require permits to travel between the West Bank and the Gaza Strip.
3. The PA and the Palestine Liberation Organization (PLO) (see paragraph 15 (g) below) have requested that IFAD provide financial assistance, including loans, to those parts of the Gaza Strip and the West Bank under the jurisdiction of the PA, namely Areas A and B, to promote their agricultural development.

Agreement Establishing IFAD

4. The Agreement Establishing IFAD specifies, inter alia, in Article 7, Section 1(b), that:

"Financing by the Fund shall be provided only to developing States that are Members of the Fund or to intergovernmental organizations in which such Members participate. In the case of a loan to an intergovernmental organization, the Fund may require suitable governmental or other guarantees."

5. Thus, IFAD is in a similar position to that of the World Bank and other international financial institutions (IFIs) in that it is constrained to lend only to members of the organization, or to other entities within a member state, provided that there is a suitable guarantee provided by a member state.

IFAD Membership

6. Although the Gaza Strip and the West Bank is neither a Member State of IFAD nor a State in the strict legal sense nor a member of the United Nations nor any of its Specialized Agencies nor of the International Atomic Energy Agency (IAEA), the "State of Palestine" is recognized by a number of IFAD Member States and is a member of the League of Arab States and its affiliated agencies as well as some regional IFIs, particularly the Arab Fund for Economic and Social Development (AFESD). In addition, it should be noted that the World Bank has not been able to obtain any State as a guarantor for any of its loans to the Gaza Strip and the West Bank nor is it hopeful of so doing.

World Bank Trust Fund for Gaza and the West Bank (WBTFGWB)

7. Faced with the likelihood of the Gaza Strip and the West Bank not being able to receive loans under IFAD's current constitutional structure, IFAD has explored alternative solutions with the World Bank (which faces similar constitutional limitations on lending to non-Member States). The World Bank's solution was to establish a Trust Fund for Gaza in October 1993, which was extended to the West Bank in August 1995 as the "Trust Fund for Gaza and the West Bank" (WBTFGWB). The WBTFGWB was established by the World Bank's Board for the specific purpose of providing loans to those parts of the Gaza Strip and the West Bank under PA jurisdiction. The International Development Association (IDA) was appointed as the administrator of the Trust Fund with responsibility for: (a) receiving resources from the International Bank for Reconstruction and Development's (IBRD) net income; (b) administering the amounts so received; and (c) lending those amounts to the PLO on IDA-only terms for projects approved by the World Bank's Board. It should be noted that, unlike the Agreement Establishing IFAD, the Articles of Agreement of IBRD do not specify the use of its net income.

Grant Financing by IFAD

8. The above paragraphs have dealt with the possibility of IFAD providing loans and grants to the Gaza Strip and the West Bank, but particularly loans. However, providing grant financing alone is simpler to justify legally. Paragraph 38 of the Lending Policies and Criteria states, inter alia:

"...In addition, the Fund may provide, in cooperation with other agencies, grants for suitable activities of international, regional and national research institutions."

No specific limitation is placed on the membership of such institutions being related to IFAD's Membership nor upon those institutions being situated in IFAD Member States. Indeed, this is almost the only example of IFAD financing not being specifically tied to IFAD Membership, and provides the precedent for the grant already given by IFAD to the American Near East Refugee Aid (ANERA) and the Palestinian Economic Council for Development and Reconstruction (PECDR) for the Gaza Strip and Jericho Relief and Development Programme (Grant No. 265-ANERA). It is also an example of the Governing Council exercising its powers to go beyond the strict wording of the Agreement Establishing IFAD.

An IFAD Fund for Gaza and the West Bank (FGWB)

9. Throughout IFAD's history, there have been several examples of funds being established for specific purposes. The first type is effectively that covering "supplementary funds", where IFAD has received amounts provided by bilateral donors, organizations or Member States for a specific purpose. The amounts received have always been for use in IFAD itself or in one or more of its Member States and always for the furtherance of the objectives of IFAD set out in Article 2 of the Agreement Establishing IFAD. The second type is that which the Governing Council will be considering in February 1998, namely the creation of an IFAD HIPC DI Trust Fund, using IFAD's and other donors' money to repay IFAD for writing off part of the debt to it of certain Member States. The third type of fund arrangement has been the Special Programme for Sub-Saharan African Countries Affected by Drought and Desertification (SRS). There is therefore a good precedent established in IFAD for the creation of funds.

10. There are also precedents for the provision by IFAD of sums of money to a fund from its own resources as there are for IFAD providing grants (technical assistance, Non-Governmental Organization/Extended Cooperation Programme (NGO/ECP), etc.) to non-Member States, such as the Gaza Strip and the West Bank. IFAD does not have the precedent of the World Bank in providing loans to a territory controlled by a Member State but where the territory is not a member (at that time) in its own right.

11. Article 7, Section 1 (a), of the Agreement Establishing IFAD states that "The resources of the Fund shall be used to achieve the objective specified in Article 2" [of the Agreement]. As all the objectives and provisions of Articles 2 and 7 would otherwise be met by lending to the Gaza Strip and the West Bank, through the PLO, save for the reference to "Members of the Fund" and as it is politically unreasonable to expect Israel to either borrow or guarantee a loan on behalf of the PLO (footnote 1 of Part 1 of Schedule 1 to the Agreement Establishing IFAD specifically states that Israel "... will not seek or receive financing from the Fund"), IFAD believes that the best solution would be for the Governing Council to waive the application of Article 7, Section 1 (b), of the Agreement Establishing IFAD in the specific case of the Gaza Strip and the West Bank. There is also a precedent for such a decision in that the Governing Council, at its Twentieth Session, waived the application of Article 7, Section 2 (g), of the Agreement Establishing IFAD, so as to allow IFAD to directly supervise its projects and administer its loans (Resolution 102/XX). That decision was taken using the principle that four-fifths of the total votes in IFAD are required to amend the Agreement Establishing IFAD and that a similar number of votes makes the Governing Council the plenipotentiary law-making body for IFAD. The alternative, to amend the relevant Article, would be to open the doors of IFAD to loan applications from many non-Member States, whereas this approach is more limited or "once-off".

Options Available to IFAD

12. Therefore, IFAD has the following options open to it if it wishes to lend to the Gaza Strip and the West Bank:

- (a) to obtain a guarantee for a loan from one of its Member States;
- (b) to lend, with governmental or other guarantees, to an intergovernmental organization, which would in turn on-lend the amount to the Gaza Strip and the West Bank; or
- (c) to waive the application of Article 7, Section 1 (b), of the Agreement Establishing IFAD and to establish a fund for the specific purpose of lending to the Gaza Strip and the West Bank.

13. IFAD can legally lend to the Gaza Strip and the West Bank, through the PLO. Although options (a) and (b) in paragraph 12 above appear feasible, they both depend upon IFAD receiving guarantees from one or more Member States. These have so far not been forthcoming. For the reasons stated above, a fund, as specified in option (c), appears to be the best route open to IFAD.

14. Therefore, IFAD's management recommends that financial assistance, including loans, to the Gaza Strip and the West Bank be provided through the establishment of an IFAD Fund for Gaza and the West Bank (FGWB). A fund would have a number of advantages. It would provide a high degree of transparency to IFAD's involvement in the Gaza Strip and the West Bank, as all IFAD's activities in those territories would be accounted for separately. In addition, IFAD could make exceptions to the rules pertaining to its regular programme without making such an exception a "blanket", "across the board" rule. In addition, other resources, such as those from bilateral donors, could be mobilized for the specific purpose of agricultural development in the Gaza Strip and the West Bank.

15. On the presumption that the Governing Council would be willing to allow IFAD to lend to the Gaza Strip and the West Bank and that it wished to do so by creating an FGWB (only the Governing Council has the power to amend or suspend or waive the application of the articles of the Agreement Establishing IFAD), the following points need to be addressed by such a fund:

- (a) The FGWB would receive its resources from IFAD by decision of the Executive Board (e.g., either the Board would approve a loan to the PLO for the Gaza Strip and the West Bank for a specific amount and, in doing so, would agree to the transfer of that amount to the FGWB or would decide to transfer at one time USD 30 million for a three-year programme). Member States, non-Member States and other organizations and entities would also be able and invited to contribute to the FGWB. Provision would also have to be made to provide sufficient resources with which to develop and appraise the projects and to pay the cooperating institution's fees. This latter would be most simply done by agreeing that they will be financed from IFAD's regular resources.
- (b) In the World Bank, interest/service charge payments and the repayment of the loan amounts accrue to IDA's regular resources, and any funds remaining unused in the WBTFGWB at its termination will be transferred to IDA's regular resources. The attached draft resolution establishing the FGWB specifies that these amounts will be returned to IFAD's regular resources.

- (c) The FGWB could be terminated either by the Executive Board (as is the case in the World Bank) or by the Gaza Strip and the West Bank attaining Membership in IFAD, whichever occurs earlier.
- (d) Lending terms would follow IFAD's normal criteria for lending, which would currently make the Gaza Strip and the West Bank eligible for IFAD's highly concessional terms.
- (e) IFAD's Procurement Guidelines and General Conditions would apply substantially as they do to other IFAD loans (however, some references may have to be changed). The World Bank similarly applies its general conditions and guidelines to such loans.
- (f) To avoid difficulties with the occupying power, whilst implementing the projects, Israel should be kept informed, at least informally, of the FGWB and the financing of each project. Activities to be financed should be limited to those areas/sectors/activities under PLO/PA jurisdiction in accordance with the relevant Israeli-Palestinian agreements (as they are under the World Bank's WBTFGWB).
- (g) Any loan from IFAD for the Gaza Strip and the West Bank would be between IFAD and the PLO, acting on behalf of the PA/Palestinian Council. Article IX, paragraph 5 (b) of the Interim Accord (28 September 1995) between the PLO and Israel recognizes the PLO as the representative of the Palestinian people and specifically provides the PLO the authority to:

"conduct negotiations and sign agreements with States or international organizations for the benefit of the [Palestinian] Council in the following cases only:

 - (i) economic agreements as specifically provided in Annex V of this Agreement;
 - (ii) agreements with donor countries for the purpose of implementing arrangements for the provision of assistance to the Council;
 - (iii) agreements for the purpose of implementing the regional development plans detailed in Annex IV of the DOP or in agreements entered into in the framework of the multilateral negotiations; and
 - (iv) cultural, scientific and educational agreements."
- (h) Provision should also be made for IFAD to provide grants to the Gaza Strip and the West Bank or to NGOs operating there from the FGWB. The World Bank has established this facility. Authority would be given to the FGWB to extend all types of IFAD grants to the Gaza Strip and the West Bank (e.g., NGO/ECP, Special Operations Facility (SOF), etc.), with the approval process being the same as for IFAD's regular resources.

- (i) An agreement would have to be signed with the PLO on the provision of privileges and immunities to IFAD officials and the provision of immunity from taxation for goods, civil works and services financed by IFAD through loans or grants (the World Bank has signed such an agreement as well as one for the establishment of a resident mission in Gaza).

Recommendation

16. At its Sixty-Second Session, the Executive Board considered and agreed with the establishment of an IFAD Fund for Gaza and the West Bank and decided to recommend to the Governing Council, at its Twenty-First Session, that it adopt a draft resolution thereon. Accordingly, the Governing Council is invited to consider this document and to adopt the draft resolution attached hereto.

DRAFT RESOLUTION ON THE ESTABLISHMENT OF AN IFAD
FUND FOR GAZA AND THE WEST BANK

Resolution .../XXI

The Establishment of an IFAD Fund for Gaza and the West Bank

The Governing Council of IFAD,

Recalling the provisions of the Agreement Establishing IFAD and, in particular, Article 7, Section 1 (b), thereof;

Further recalling the Israeli-Palestinian agreements providing, inter alia, for the Palestinian Authority to exercise jurisdiction over various areas, sectors and activities in Gaza and the West Bank;

Noting the request to IFAD by the Palestinian Authority and the Palestine Liberation Organization for financial assistance to support agricultural development in Gaza and the West Bank;

Further Noting that the World Bank and other international financial institutions have already provided loans and other financial assistance to Gaza and the West Bank and that the World Bank has, for that purpose, established a Trust Fund for Gaza and the West Bank with the International Development Association as Trustee;

Believing it desirable to promote the purposes of the Fund in Gaza and the West Bank by establishing a fund therefor in order to finance agricultural development projects and programmes in Gaza and the West Bank;

Having considered document GC 21/L.9 on the Establishment of an IFAD Fund for Gaza and the West Bank and the draft Resolution contained therein;

Decides that:

1. An IFAD Fund for Gaza and the West Bank (hereinafter called "FGWB") shall be established, constituted of the funds which shall from time to time be contributed in accordance with the provisions of this Resolution, and any other assets and receipts of the FGWB.
2. IFAD is hereby appointed the administrator of the FGWB.
3. The FGWB shall be authorized to receive the following resources for the general purposes of the FGWB or for specific projects or programmes supported by the FGWB:
 - (a) subject to the approval of the President of IFAD, contributions made in a freely-convertible currency by non-Member States of IFAD, other entities and private individuals;
 - (b) contributions made in a freely-convertible currency directly by Member States of IFAD;
 - (c) funds, in such amounts as it shall specify, that the Executive Board may, from time to time, decide to transfer from the resources of IFAD that are or may be available under the IFAD Programme of Work and Budget approved for each year; and
 - (d) funds from other resources, subject to the approval of the Executive Board.

4. The adequacy of the resources of the FGWB shall be reviewed periodically by the Executive Board. In that context, the Executive Board shall decide, from time to time, the maximum amount of resources that may be held by the FGWB.

5. IFAD shall invest the resources of the FGWB together with, and in the same manner as it applies to, its regular resources.

6. The privileges and immunities accorded to IFAD shall apply to the property, assets, archives, income, operations and transactions of the FGWB. In this context, IFAD, through the President of IFAD, may enter into such agreements and arrangements as may be required to ensure the said privileges and immunities and the achievement of the purposes of the FGWB.

7. Notwithstanding Article 7, Section 1 (b) of the Agreement Establishing IFAD, IFAD shall use the resources of the FGWB to provide financial assistance for projects and programmes in the form of loans and grants for Gaza and for such areas, sectors and activities in the West Bank which are or will be under the jurisdiction of the Palestinian Authority pursuant to the relevant Israeli-Palestinian agreements consistent with the purposes of IFAD.

8. Loans and grants provided by the FGWB shall be in accordance with the terms, conditions, rules, regulations, guidelines and procedures applicable to loans and grants provided by IFAD from its regular resources save for any limitation that may apply thereon requiring the recipient to be a Member State of IFAD. Repayments of such loans and payments of interest/service charges thereon shall accrue to IFAD as part of its regular resources.

9. IFAD, as administrator, shall enter into agreements with the appropriate public or private entities in Gaza and in the West Bank - in the latter case for such areas, sectors and activities which are or will be under the jurisdiction of the Palestinian Authority pursuant to the relevant Israeli-Palestinian agreements - to be identified as the recipients of loans and grants, pursuant to such terms and conditions as provided in this Resolution.

10. IFAD shall maintain separate records and accounts to identify the resources of the FGWB, the commitments and the reimbursement of expenditures to be financed out of the FGWB, and the receipts and disbursements of funds in the FGWB.

11. (a) The President of IFAD shall, as soon as practicable after the end of each fiscal year of IFAD, furnish to the Executive Board: (i) a report on projects and programmes financed from the FGWB; and (ii) as part of its annual financial statement, a financial statement for the FGWB.

(b) After all commitments from the FGWB shall have been fully disbursed, the President of IFAD shall, as soon as practicable, furnish to the Executive Board and other contributors to the FGWB, if any, a report on the operations financed from the FGWB.

12. The incremental administrative expenditures directly incurred by IFAD in administering the FGWB and the expenditures directly incurred by IFAD in preparing and appraising projects and programmes in Gaza and the West Bank for presentation to the Executive Board and, subsequently, in administering them or ensuring their administration by Cooperating Institutions shall be paid by IFAD from its regular resources, within the limits established in the IFAD Programme of Work and Budget approved for each year.

13. The Executive Board shall terminate the FGWB upon either Gaza and the West Bank attaining Membership in IFAD or upon a proposal from the President of IFAD at an appropriate time, whichever shall occur earlier. At that time, the Executive Board shall decide upon the arrangements for the termination of the FGWB and the disposal of the resources of the FGWB.