THE CHALLENGE

While political relations between Israelis and Palestinians remain strained, both sides continue to engage in active and relatively large-scale bilateral trade, primarily motivated by geographical proximity and respective economic advantages. Estimates place annual trade figures at approximately US$4 to 5 billion.

Commercial disputes are a natural by-product of international trade, and Palestinian-Israeli trade relations are no exception. However, the complicated Israeli-Palestinian relationship has created some unique challenges for effective commercial dispute resolution:

• The majority of bilateral trade between the two sides is comprised of sales from Israel to the Palestinian areas (Palestine to Israel trade is primarily workforce related). This reality often results in the Israeli side being the stronger party in the commercial negotiation. As a direct consequence, Israeli law is often the law of the contract and Israeli courts are the agreed forum for resolution of commercial disputes between Israeli and Palestinian business associates (Palestinian courts are generally extremely hostile to Israeli parties and as such would not be viable alternatives even were the parties so inclined).

• In spite of attempts in the Oslo Accords to provide for mechanisms for the mutual recognition and enforcement of judicial decisions and rulings, in practice the enforcement of Israeli court decisions in Palestinian areas is virtually impossible.

• As a result of the combination of these two factors, both sides are faced with a "lose-lose" reality with respect to commercial dispute resolution: the Palestinian party is usually forced to agree to a legal forum it may view as unfavorable, while the Israeli party runs the considerable risk that awards in its favor from the Israeli courts will not be enforced (awards of Israeli courts in favor of Palestinian parties are enforceable in Israel).

Recognizing these inherent risks, businesses interested in bilateral Israeli-Palestinian trade often resort to either one of the following transaction models. One, is cash on delivery: a relatively undeveloped trade practice, guaranteeing payment but creating serious practical difficulties for large-scale trade. The other, involves requiring a bank or other guarantees which can improve payment probability, but at high transaction costs.
In the alternative, parties forego bilateral Israeli-Palestinian trade opportunities and focus on other, less challenging, markets.

The creation of a viable, mutually acceptable Palestinian-Israeli commercial dispute mechanism, which issues enforceable awards, would go a long way towards overcoming these challenges and eliminating barriers that currently obstruct bilateral trade and would generally improve relations between the two sides.

**CORE PRINCIPLES**

The Jerusalem Arbitration Center (JAC) is an apolitical, impartial, professional, enforceable and cost-effective alternative for the resolution of Palestinian-Israeli business related disputes:

"**Apolitical**: The JAC is the brainchild of Israeli and Palestinian businessmen, focused on improving bilateral relations from the ground up. It is not a governmental or political initiative and does not address or impact any of the sensitive issues of the Palestinian-Israeli negotiations. Notwithstanding its purely apolitical nature, both the Israeli and Palestinian governments have recognized the unique potential of the project and support it fully and actively.

"**Effective**: Alternative dispute resolution (ADR) mechanisms are increasingly viewed as a preferred approach to the resolution of commercial disputes. The JAC will offer prospective Israeli and Palestinian parties, for the first time, an option to resolve their disputes more efficiently through the use of modern ADR methods (arbitration and, where appropriate, mediation), based on internationally accepted rules and procedures.

"**Impartial**: Recognizing the extreme sensitivities of both parties, the JAC structure is based upon a principle of equal representation of Palestinians and Israelis at all levels and in all governance bodies. Combined with a strong international presence, this should provide parties with a high level of confidence in the objectivity and impartiality of the JAC and its proceedings.

"**Professional**: While arbitration has become a very popular practice within the Israeli business community over the last decade, it is still much less accepted among Palestinians. In order to overcome this disparity and to ensure the JAC operates at the highest levels of professionalism, the JAC is modeled on one of the world's premier commercial dispute resolution centers – the ICC's International Court of Arbitration in Paris (ICA). Among other things, the structure, rules and procedures of the JAC are modeled on those of the ICA. Furthermore, in order to guarantee that the JAC maintains international standards, the ICC and ICA, in fulfillment of their goal to serve as "merchants of peace", have both consented to actively support the JAC, Underlying the JAC is a Joint Venture Agreement between ICC Palestine and ICC Israel and a Memorandum of Understanding between ICC Israel, ICC Palestine, ICC and ICA.
"Enforceable": All sides recognize that enforcement of awards, in both areas, is crucial to the success of the JAC and will distinguish it from all other dispute resolution mechanisms currently available to Palestinian and Israeli parties. Effective enforcement has been identified by the ICC and ICA as one of the most important pre-conditions for their support of the JAC. Therefore, the JAC has secured the commitment of the relevant judicial and executive authorities on both sides to facilitate the enforcement of JAC awards. By default, under the Rules of the JAC, the seat of the hearings will be in Paris, France. Therefore, since Israel is a party to the New York Convention on the Recognition and Enforcement of International Arbitral Awards, JAC awards will be enforceable as a matter of course under Israeli law. Similarly, the relevant Ministers in the Palestinian Authority have committed to guarantee enforcement of JAC awards, and discussions are now underway so as to set up mechanisms and procedures ensuring this result.

"Cost-effective": In recognition of regional commercial realities, the JAC plans to offer a relatively low-cost alternative to otherwise extremely expensive judicial proceedings. Similar to the ICA fee structure, JAC fees will be based upon the value of the dispute in question. In order to keep fees and costs as low as possible, the JAC is being planned as a "lean" organization, with the minimal number of staff required to fulfill its various functions. Furthermore, for the first several years of its operation, until it becomes profitable, it is expected that the JAC’s main source of funding will be external.

THE STRUCTURE OF THE JAC

The JAC is a joint enterprise established by ICC Israel and ICC Palestine through a joint venture agreement. The joint venture agreement governs the terms of the JAC’s operation. This approach was adopted over an alternative approach of setting up a legal entity in order to avoid choosing a nationality of the JAC. The JAC is comprised of three bodies: a professional Secretariat; the JAC Court; and the JAC Board.

The Secretariat: Manages and supervises the docket. It is to be located at the JAC Hearing Center in East Jerusalem, and is comprised of a non-local Secretary General and two deputies, one Israeli and the other Palestinian. All members of the secretariat are professional lawyers with a strong background in international arbitration with an emphasis on ICC arbitration expertise.

The JAC Court: Modeled after Court of the Paris-based ICA, the JAC Court is responsible for approving arbitrators’ awards. In addition, the Court will make policy recommendations to the JAC Board. In keeping with the principles of equality and impartiality underlying the JAC, the Court is comprise of nine leading arbitration experts including two Palestinians, two Israelis and five members of the international community.
The JAC Board: Responsible for setting out management policies and approving the recommendations of the JAC Court on legal policy issues. Once again, there is equal numbers of Palestinian and Israeli board members, together with a strong international presence. The JAC Board shall have three co-chairpersons: one Israeli, one Palestinian and one international.

The JAC Hearing Center: One of the early successes of the JAC was in its principal agreement to locate it in East Jerusalem. Since both Israelis and Palestinians regard East Jerusalem as part of their capital, this creative solution enables both parties to feel equal ownership over the JAC without taking a position on the political issues relating to Jerusalem. By taking this decision the Israeli and Palestinian principals were able to demonstrate mutual respect while side-stepping politics. The location of the JAC thus demonstrates the pragmatic and creative spirit of the institution.