
MEMORANDUM

TO: DR. SAEB ERAKAT
FROM: NSU - LPD
SUBJECT: GENERAL ADMINISTRATION OF THE CROSSING AND BORDERS
DATE: 24 MAY 2006

The purpose of this memo is to summarize the work being completed with respect to developing the Border Crossing Administration (BCA), and to outline the next steps being taken in this regard. It is for purely internal purposes and is not for public distribution.

Over the past two weeks the LPU has engaged in extensive meetings and workshop sessions with various interested parties regarding the BCA. These have included several sessions with Dayton's advisor Denis LeFebvre (DL), an expert on the creation of border administrations, as well as meetings with the World Bank technical team and Palestinians who currently work on the issue or have worked on the matter in the past. Upon the recommendation of these experts, we have devised a process for the improvement and capacity building of the BCA into a proper border administration. That process, as well as several key issues which must be addressed, is outlined below. It should be noted that the work assumes that the BCA will be responsible for the ports of entry only, and not the entire perimeter of the borders, the maritime space and the airspace.

PROCESS OF WORK

After consultations, the experts involved reached a general consensus that the appropriate first step is to determine and draft a detailed mandate and mission statement. From this, an organizational structure should follow. All parties agree, however, that formalizing the organizational structure should not and cannot be a first step.

Mission statement

The mission statement is essentially the principles by which the BCA should function. It is a short statement that sets the vision and goals of the BCA and the framework in which the mandate and operations fit. Most BCAs have this mission statement posted on the walls of the various crossings to remind the staff of their goals and purpose. DL offered to send us models on which to base the Palestinian BCA mission statement.

Mandate

The mandate is essentially already included in very basic form in the Presidential decree. This, however, is very general and should be detailed to be useful. Before this can occur, there are several political decisions which must be made regarding the fundamental structure of the BCA and its relationship with other parties. Those decisions are outlined below.

Once complete, these two documents, the mission statement and detailed mandate, will need to get political approval through the appropriate political process.

Timing and Approach

The importance of engaging in this process up front is to determine precisely where it is we want to reach at the end of the improvement process. Once there is general agreement on this, we can then determine the most appropriate steps to reach those ends. This will, however, require a decision as to whether the leadership would prefer to take a top down or bottom up approach.

A top down approach would entail a complete restructuring of the BCA at once. A bottom up approach would entail incremental changes towards the agreed goal, starting from the current on the ground situation.

Related to the choice of approach is the issue of timing. The time at which various improvements can or should be taken may influence the approach used in improving the BCA. A recommendation as to the timing and the best approach to take will follow, once the mission statement and mandate are complete.

POLITICAL DECISIONS

As noted above, a clear mandate setting out the functions and responsibilities of the BCA is a critical first step toward improving and developing the existing institution. In order for such a mandate to be developed there are several pressing political decisions that must be made in devising that mandate. Four of these decisions are outlined below, to give you a sense of what type of issues will have to be addressed. More detailed analysis of the necessary decisions and our recommendations with respect to the decisions will follow once our work develops further.

1. Relationship of policing force to BCA
2. Relationship with PA ministries
3. Relationship with the private sector
4. Status and powers of the head of the BCA

1. Relationship of policing force to BCA

By way of background, it should be noted that both *security* and *safety* functions are performed at each crossing. The nature of these functions should be distinguished. In short, security functions relate to the protection of national security, including the proper and lawful transit of people and goods through the crossing point (tasks include intelligence gathering, risk management, and inspection policies). Safety refers to the policing function, e.g. maintaining peace and order on the premises, ensuring that all persons and goods are safe

within the crossing point, and guarding the outside perimeter of the crossing (currently, at Rafah this role is performed by the Presidential Guard). Security functions will always be performed as part of the BCA, in coordination with domestic and international agencies regarding intelligence, health, customs, etc. With respect to safety, however, there are several options regarding the relationship of the safety team to the BCA:

- a. Purely civilian model. BCA staff process goods and people at crossings for both trade and security purposes, and rely on external police force for maintaining safety. On-site intelligence conducts risk management and other security functions, while overall safety and premises security is carried out by national security force or other appropriate external team.
- b. Fully Integrated agency. All safety functions are part of the mandate of the agency, such that policing and premises security is conducted by a separate and internal unit. This requires training and constant upkeep of a security force within the BCA itself.
- c. [Extensive border agency. Model (b) above with the additional mandate of responsibility for overall security for perimeter, air and maritime space. [Note: This model is not in accord with the basic assumptions of the rest of the work.]]
- d. Hybrid model: (a) and (b) together. Presidential Guard personnel, facilities and recruiting process may be used to recruit and train special section of the Guard for BCA. Those agents will belong to BCA, but will receive training from the Presidential Guard. There are a number of mechanisms (such as contracts, secondment arrangements) that may be used for these purposes. [Note: current Karni project may fit well into this model, where by preventive security personnel who are now responsible for security at Karni would be folded into the PG. At first glance, this is the recommended model, but a more comprehensive analysis and recommendations will follow after further study.]

Two options In the current context:

- a. the PG take on all safety functions (controlling gates, perimeter, cargo movement etc.) with other security agencies (preventive security, NSF) being removed or seconded under the PG command to perform all safety functions. Security and operations functions remain with the agencies currently handling them (preventive security and intelligence). In this scenario, all activities are under the BCA's command except for safety.
 - d. the PG recruit and train a special unit to work under the BCA command. Current security agencies would either be replaced by the PG unit or they get seconded under its command. In this scenario, all activities are under the BCA's command including safety.

2. *Relationship of BCA with ministries*

The relationship and level of ongoing cooperation the BCA can have with the ministries is varied and includes many options. For the purposes of explaining the difference between the two models, the customs capacity will be used as a model. The two extreme models are:

- a. Administrative, law enforcement administration/agency: The mandate of the BCA only enforces the laws, regulations, and rules of the relevant ministries and policymakers. Although all of the operational aspects of the crossing remain under the power of the BCA, there is heavy reliance on the ministries in setting policy.

In this model, all of the customs functions and policy making would remain in the MoF, as is currently the case. The customs team at the crossing would report to the BCA while on duty, but all training and functional matters are handled by the customs department in the MoF.

- b. Empowered administration/agency: Alternatively, the agency could assume some operational functions currently performed by various ministries as part of its mandate. This arrangement may help empower the agency and make it more effective, although it would depend greatly on the individuals responsible for the BCA.

In this scenario, for example, the BCA would have greater control over the customs staff, including being charged with all training, and not the MoF. Instead of being merely seconded from the MoF, the customs staff would become an integrated part of the BCA. It seems that this may be currently contemplated by the customs department with respect to the customs staff that deal with Israel regarding customs. General policy making power, however, would not be transferred from the ministries.

It should be noted, however, that an empowered agency should be accompanied with significant checks and anti-corruption regulations to ensure that such power cannot be abused.

Two options:

- a. Law enforcement administration: apply ministries' policies.

- Detail mechanism for coordination with ministries

- b. Empowered administration/agency: taken on some functions

- Specify which functions undertaken by GACB
- Detail anti-corruption regulations
- Detail mechanism for coordination with ministries

3. *Role of private sector in the operation of the BCA*

Currently, all functions are performed by the BCA itself. There are other models, which rely to varying extents on the private sector. In a process which includes fair bidding, it may be more efficient to subcontract out some of the tasks to a private company, such as cleaning, forklift operation, etc. This would reduce the need for a large and cumbersome staff to perform tasks such as purchasing and managing forklifts and cleaning supplies. This would become instead an issue of contract management.

Major functions, such as intelligence, checking goods or people, and general operation of the crossings, should stay with the BCA. Because the BCA is a law enforcement agency, and requires extensive coordination with intelligence and other agencies around the world, most matters are too sensitive to contract out to private sector. Therefore, a limited private sector role may be a good option.

Decisions:

- Specify which functions will be subcontracted
- Specify tendering regulations
- Specify mechanism for monitoring the contract

4. *Status of head of agency*

The Presidential Decree setting out the organisation of the BCA (March 18, 2006) grants the head of the BCA the rank of Director General. Given the broad mandate envisioned for the BCA in the Decree, covering all border crossings, the rank of the head within the general administrative hierarchy needs to be sufficiently high to empower the BCA to properly and effectively fulfil its mandate. Therefore, it may be recommended for this status to be reassessed in the future, particularly given the potential future scope and revenue-generating potential of border crossings (in a developing economy such as Palestine, revenues from borders – customs, taxes, fees – would constitute a significant portion of public revenues). For the present time, however, this is not likely to be a priority issue, as Rafah Crossing is the only significant “field operation” at the moment. As such, the operation of the BCA is still fairly limited and may not immediately require an upgrading of the status of the chief officer.

OTHER MATTERS REQUIRING POLITICAL CLEARANCE AND GUIDANCE

There are several other matters which require your guidance and assistance.

Because this issue is politically and practically sensitive, it is necessary for a political leader to liaise with several of the involved parties to ensure that the proposed process is acceptable and will be endorsed by all the necessary people. The two major parties that require political coordination are the current head of the BCA and the ministries. Because the mandate for

the BCA remains under the President, and the description of the responsibilities and roles are ultimately his responsibility, the President, of course, has the final say.

Maintaining support on process by head of the BCA

Because the head of the BCA will be responsible for implementation of the mandate and compliance with the mission, his continued support for the process used is key. Although there may be pressure to maintain the current ad hoc mechanism for operating the BCA or claim that the broad mandate in the decree is enough (i.e. introducing a formal organizational structure as a reform only) it is unlikely that this would actually improve the BCA or build its capacity.

Capacity building would include:

- Developing comprehensive mandate/mission
- Capacity building for all staff, including extensive and ongoing training
- External experts to assist with training and understanding needs
- Developing procedures and manuals for operations
- Anti-corruption measures and dealing with conflicts of interest (e.g. those with conflicting interests will be asked to divest or be dismissed)
- Developing risk management system which combines customs, security, intelligence, and other relevant factors
- Improving customs operations, including by reliance on external experts

Therefore, there must be willingness of all parties to engage in actual capacity building, which would require the more comprehensive process outlined here. Securing this willingness and sensitizing the head of the BCA to all of these needs requires a strong political leader, and is not a technical matter. This should be secured as soon as possible.

Political Liaisons and Relationships with the Ministries

In addition, because the ministries do and will inevitably have some role in the BCA, particularly once goods are being processed, the leadership will have to decide on whether and to what extent to engage the ministries on defining their role clearly and concretely as regards to the operations at the crossings that involve their expertise, resources or input. Currently, the process by which the ministries are engaged is informal, with the head of the BCA approaching the ministries as necessary. Although the leadership may chose to continue this practice in the short term, it is not recommended as a permanent process as clearly defining the roles and responsibilities of all parties is an important part of the capacity building process. A more detailed analysis of this issue will follow.

CONCLUSIONS AND RECOMMENDATIONS

Given the above, the LPD will continue to develop the mandate and mission of the BCA, working with DL and other parties as necessary.

In the interim, it may be wise to begin to think about the several political decisions which will need to be made in the near future. As noted above, more detailed analysis and recommendations will follow.

Also, the process of political liaison, particularly with the head of the BCA, regarding the process proposed should be undertaken immediately.

In addition, it is recommended that the leadership convey (both domestically and internationally) that it takes the functions of the BCA and the improvement process very seriously, and sees it as a priority. This is important to ensure that any decisions made or processes begun are actually implemented and followed through.