

THE LEGAL STRUCTURE OF THE HA'AVARA (TRANSFER) AGREEMENT: DESIGN AND OPERATION

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One of the most interesting uses of the trust form in twentieth century Palestine was the *Ha'avara* (Hebrew for "transfer") mechanism of the 1930s. *Ha'avara* involved what amounts to a sophisticated and unusual trust model.

The *Ha'avara* mechanism was first created in 1933, following negotiations between private Jewish businessmen, German-Jewish banks, representatives of the German Zionist movement, and the Reich Ministry for Economics, in order to permit German Jews to emigrate to Palestine with as much as possible of their property intact. Such emigration was made difficult by two norms, one imposed by the German law of the time, and the other by the law of the then Mandate for Palestine. The German norm limited the amount of funds those leaving German territory could take with them, with special permission, to 200 Reichsmarks (then worth about 13 Pound Sterling).¹ The Palestinian norm subjected Jews wanting to legally immigrate to Palestine to a system of immigration quotas. Once the Nazis came to power, the British-set quotas were clearly unequal to German-Jewish demand for immigration certificates. A parallel immigration track, free of the quotas, existed for immigrants who could demonstrate their ownership of property worth at least 500 (later 1,000) Palestinian Pounds. But to qualify for this track, immigrants had to be able

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¹ Howard S. Ellis, German Exchange Control, 1931-1939: From an Emergency Measure to a Totalitarian Institution. Part 2, in: *Quarterly Journal of Economics* 54/4 (1940), pp. 1-158, 18.

to take this sum with them to Palestine, a requirement made problematic, for German Jews, by the strictures of German currency control.²

Ha'avara provided a solution, or rather, a fluctuating series of solutions, depending on the legal and regulatory changes put in place by the German authorities. I will describe the basic *Ha'avara* model introduced in 1933, and some later forms, which developed as responses to evolving constraints.

The Basic Structure

The basic structure involved two trust companies, set up during late 1933 to early 1934 and registered in Germany and Palestine respectively. The German trust company, PALTREU – Palästina Treuhandstelle zur Beratung Deutscher Juden GmbH, was a partnership of the Anglo-Palestine Bank and two German-Jewish private banking houses, owned by the Warburg and Wassermann families respectively. It was registered in Berlin's commercial register on January 25 1934.³ The Palestine-based trust company, the Trust and Transfer Office '*Ha'avara*', was, at first, a Tel-Aviv subsidiary of the Anglo-Palestine Bank; the bank later transferred its holding to the Jewish Agency for Palestine, the local arm of the World Zionist Organization. The original scheme was as follows: German Jews deposited Reichsmarks in excess of the Reichsmark

² For the history of the '*Ha'avara*' transfer operation see generally, Werner Feilchenfeld, *Five Years of Jewish Immigration from Germany and the Haavara-transfer*, Tel Aviv 1938; Werner Feilchenfeld et al., *Haavara-transfer nach Palästina und Einwanderung Deutscher Juden 1933-1939*, Tübingen 1972; Ludwig Pinner, *Vermögenstransfer nach Palästina, 1933-1939*, in: Hans Tramer (ed.), *In Zwei Welten: Siegfried Moses zum fünfundsiebzigsten Geburtstag*, Tel-Aviv 1962, p. 133; Yoav Gelber, *New Homeland: Immigration and Absorption of Central European Jews, 1933-1948*, Jerusalem 1990, pp. 26-35, 154-175; Ruth Bondi, Felix: Pinchas Rosen and his Time, Tel-Aviv 1990, pp. 120, 247, 290; Rafael N. Rosenzweig, *The Economic Consequences of Zionism*, Leiden 1989, pp. 81-89; Herbert A. Strauss, *Jewish Emigration from Germany, Nazi Policies and Jewish Responses (II)*, in: *Leo Baeck Institute Yearbook* 26 (1981), p. 343; Edwin Black, *The Transfer Agreement: The Dramatic Story of the Pact Between the Third Reich and Jewish Palestine*, New York 2001; Yfaat Weiss, *Staatsbürgerschaft und Ethnizität. Deutsche und polnische Juden am Vorabend des Holocaust*, München 2000, pp. 131-194; Dorothea Hauser, *Zwischen Gehen und Bleiben. Das Sekretariat Warburg und sein Netzwerk des Vertrauens 1938-1941*, in: Susanne Heim/Beate Meyer/Francis R. Nicosia (eds.), *Wer bleibt opfert seine Jahre, vielleicht sein Leben. Deutsche Juden 1938-1941*, Göttingen 2010, pp. 115-133.

³ Database of Jewish Owned Businesses in Berlin. Cf. www2.hu-berlin.de/djgb.

equivalent of £500 (later £1,000) in one of two specially earmarked accounts at the Reichsbank, referred to as *Sonderkonto I* and *II*. Having received a certificate for doing so, they were able to prove their ownership of funds in the sum deposited to the Mandate immigration authorities and receive a visa for Palestine as so-called "Capitalists". Jewish-Palestinian merchants and industrialists, meanwhile, placed orders for German products – typically products German manufacturers had trouble selling on the free market – with the 'Ha'avara' office in Tel Aviv. Monies taken from the PALTREU Reichsbank accounts were channelled to the German manufacturers as payment.⁴ As the Palestinian purchasers, having received the goods, repaid 'Ha'avara', through Palestinian banks, for the credit extended, 'Ha'avara' paid the counter-value to the newly-arrived immigrants from Germany. 'Ha'avara' held most of its foreign currency in an account at the Templerbank in Jaffa, which held the monies on trust for 'Ha'avara'.

On average, 25% of the *Ha'avara* monies were deducted from payments made to depositors, and used to cover the travel costs of poor immigrants from Germany and support immigrants during their absorption in Palestine. Depositors also lost the applicable exchange commission for purchasing Sterling.⁵ Another fraction of the sums deposited was deducted to reimburse Palestinian purchasers of German goods for the extortionate prices demanded by German manufacturers.⁶ Yet another fraction was deducted to reimburse the German manufacturers for their loss of otherwise applicable German export subsidies; such subsidies were inapplicable to exports to Palestine. This *Bonifikation* grew to alarming proportions: in 1935 it reached 21.6% of the value of the merchandise imported, and by 1937, it was as high as 43.4%. On top of those losses,

⁴ See discussion by the Ha'avara board of the allocation of monies deposited in Germany between different Palestinian purchasers of German goods, including Hanote'a, Nir, Pitra, the Palestine Publishing Company, Rassco, Levant Fair and Jaffa Plantations: meeting protocol, in Central Zionist Archives (further CZA), file L57/01/05.

⁵ The protocol of a Ha'avara management meeting held in March 1934 reveals that an exchange commission of 2% of sums deposited was paid to the Anglo-Palestine Bank: protocol of meeting held March 6, 1934, CZA, L51/2175, § 7.

⁶ See discussion of providing a more attractive exchange rate (*Kursverbesserung*) to Palestinian purchasers of German goods, who provided the Palestinian Pounds eventually paid to immigrants from Germany: meeting protocol, last note, §§ 2-3. The difference between the actually prevalent exchange rate and the exchange rate used to compute the amount of Palestinian Pounds paid, indirectly, by purchasers to immigrants, was paid out of sums the latter deposited.

Ha'avara-PALTREU charged a 4% commission to cover their administrative costs.⁷

Strikingly, while the transfer mechanism functioned as a hybrid trust, both public and private, neither of its two arms was, in point of form, a pure trust. Though 1930s German law knew a form of trust in the *Treuhand*, it was seen as more appropriate to establish PALTREU as a partnership. PALTREU did, however, conclude a deed of trust – a *Treuhandvertrag* – with each depositor, under which depositors accepted the conditions and costs of the *Ha'avara* mechanism. The Tel-Aviv arm of the operation, the Trust and Transfer Office '*Ha'avara*', was a trust *company* rather than a pure trust, though it did in fact function as a trustee, unlike some other Palestinian trust companies of that era.⁸ From a legal point of view, a further peculiarity of the transfer operation *as a trust structure* was that the monies distributed to its beneficiaries in Palestine did not derive directly from monies its settlors deposited in Germany, despite the settlors and beneficiaries being the same persons. Monies deposited in Germany were paid to German manufacturers. Monies distributed in Palestine came from credit extended by Palestinian banks to Palestinian purchasers of German goods. Of the familiar types of trust, the '*Ha'avara*' operation most resembles, perhaps, the pension fund: a standardised, collective trust fund intended for a specific, pre-defined class of beneficiaries, where employee and employer contributions to the fund are made at time X (during employment) and disbursed at time Y (retirement). The *Ha'avara*-transfer substituted the physical distance between Germany and Palestine for the distance in time in the pension fund model, and the difficulties of Nazi repression, German currency controls and Mandate immigration controls for the hardships of age.

The basic structure of *Ha'avara* was later modified as circumstances changed. Below are descriptions of some of the later variations.

⁷ According to the standard contract *Ha'avara* concluded with each depositor in Sonderkonto I, 1% of sums deposited were deducted to pay the costs of PALTREU, and 3% to pay those of *Ha'avara*. The contract is found in the CZA, L57/45/15; data regarding commissions is in § 9. Further commissions were payable in respect of specific transactions, such as where Exim Ltd. served as agent for *Ha'avara* Ltd. for the conclusion of specific import transactions, in which case a commission of up to 1% was payable to Exim; see protocol of meeting held 6.3.1934, CZA, L51/2175, §§ 2, 4.

⁸ On the reception of the trust form in the law of Mandate Palestine see Adam Hofri-Winogradow, *Zionist Settlers and the English Private Trust in Mandate Palestine*, in: *Law and History Review* 30/3 (2012), pp. 813-864.

Variations on the Basic Structure

(1) *Sonderkonto II*. One early variation on the basic model, created simultaneously with that model, involved German Jews who were interested in transferring capital to Palestine *in advance* of physically immigrating there, rather than *simultaneously* with their immigration. The fundamental agreement of August 1933 posited that to serve the needs of such absent investors, a special Reichsbank account called *Sonderkonto II*, separate from that servicing the needs of current immigrants, be opened. As with monies deposited in Special Account No. 1, those deposited in Special Account No. 2 could not be directly invested in Palestine. It was only to the extent that the staff of *Ha'avara*-PALTREU were able to facilitate German export transactions to Palestine, that monies equal to the sums paid from *Sonderkonto II* to the German exporters, minus an ever-increasing *disagio*, were invested in selected assets, securities and businesses in Palestine, the resulting debt being credited to the absent investor. In addition to commissions identical to those *Ha'avara*-PALTREU charged to funds deposited in *Sonderkonto I* (4% to cover the organization's own costs and 2% to cover the exchange commissions charged by the Anglo-Palestine Bank), funds deposited in *Sonderkonto II* were charged an additional 9% commission, which was used to accelerate the pace at which the organization was able to pay out funds to immigrants arrived in Palestine.⁹ Investment targets had to be approved by either the German Consul in Jerusalem or the Wirtschaftsministerium (Ministry for Economics). Despite the difficulties encountered, this international investment scheme produced a powerful influx of private capital into the Palestinian economy and virtually created the Palestinian trade in securities. A fledgling stock exchange was first established in 1935.¹⁰

(2) *Securities Substituted for Cash*. One difficulty facing *Ha'avara*-PALTREU was that deposits in Germany vastly outpaced, in value, the export transactions the organization was able to conclude. As monies could only be released to newly-arrived immigrants in Palestine following payment by Palestinian purchasers of German goods for the goods received, the excess of deposits over transactions produced delays. By early 1935, *Ha'avara* was only, on average, able to reimburse immigrants for the sums deposited, minus the various deductions, 12 to 18 months

⁹ Protocol of *Ha'avara* management meeting held March 6, 1934, CZA, L51/2175, § 10.

¹⁰ For its history see Shalom Doron, *From Exchange Bureau to Stock Exchange (1933-1962)*, in: *Riv'on Le'Banka'ut* 137 (1997), pp. 43-83.

after the deposit.¹¹ By late 1935 the average delay grew to two years. Such delays created difficulties for the newly-arrived immigrants from Germany, who having left their funds in Germany except for what could be transferred by way of *Ha'avara*, were in many cases threatened with at least temporary poverty on their arrival in Palestine.

An early partial solution was to provide newly-arrived immigrants, who could not yet be provided with actual funds, with securities instead. This was another powerful engine for the development of the Palestinian market in securities, for securities could be cashed before their redemption date by selling them on this secondary market.

(3) *German Exports to Other Middle Eastern Countries*. Another solution for the excess of cash deposits over export transactions was to enlarge the field of prospective importers of German goods by marketing those goods to buyers outside Palestine. Exports other than to Palestine were not part of the original remit of *Ha'avara*-PALTREU, as delineated in August 1933. As early as 1934, however, the *Ha'avara* board decided to establish a branch in Syria, using the K. A. Zilkha bank, a private Jewish bank based in Beirut, as an agent for *Ha'avara*.¹² On March 7, 1935, Hans Hartenstein of the Wirtschaftsministerium approved the use of Marks worth up to 65,000 Pounds Sterling, taken from the monies deposited in *Sonderkonto I*, to pay for German exports to Iraq.¹³ *Ha'avara* established a subsidiary called *NEMICO*, short for the Near and Middle East Commercial Corporation, for the purpose of selling German goods in Syria, Iraq and Egypt, so as to speed up the pace in which deposits were released to immigrants arrived in Palestine.

(4) *Eigentransfer and Bautransfer*. A third solution for the glut of deposits stranded in the two PALTREU Reichsbank accounts was the *Eigentransfer*: some immigrants approached German manufacturers independently of the organized efforts of *Ha'avara*, and proposed an

¹¹ Letter, Ha'avara to PALTREU, February 21, 1935, CZA, L57/40/01. Immigrants could obtain an earlier withdrawal against the payment of an "acceleration commission", set, in March 1934, at 4%: see Ha'avara management meeting protocol, March 6, 1934, CZA, L51/2175, § 6.

¹² See protocol, 8th Meeting of the Ha'avara board, held September 6, 1934, CZA, L57/01/08. The board also decided to open a Ha'avara-owned account at one of the Beirut banks.

¹³ See letter from Hartenstein to Dr. Tolokowsky of the Jaffa Citrus Exchange, October 28, 1935, CZA, L57/65/01, referring to the decision of March 7, 1935 and extending it for the year 1936. On Hartenstein's role in facilitating the Ha'avara scheme see Christopher Kobrak, *The Foreign-Exchange Dimension of Corporate Control in the Third Reich: The Case of Schering AG*, in: *Contemporary European History* 12/1 (2003), pp. 33-46, at 39, 42-44.

export transaction to Palestine. The goods immigrants purchased with funds they themselves deposited in the PALTREU accounts were either for personal use (for example, the purchase of machinery in order to establish a factory in Palestine) or for resale to an existing or future Palestinian user. Ha'avara tried to control the *Eigenttransfer* by subjecting import transactions organized by individuals to the consent of its *Eigenttransfer* Committee.¹⁴ One common type of *Eigenttransfer* was the *Bautransfer*. This started with immigrants using monies they deposited in the PALTREU accounts to purchase German building materials with which to build their homes in Palestine. Some such homes were built by the immigrants themselves, while other homes were built by others, either for the immigrants' use or for renting out, with the rent payable to the immigrant. Later, the *Bautransfer* expanded to include exports of building materials to be provided as mortgage loans to Palestinian housing entrepreneurs who were not immigrants from Germany.¹⁵

(5) *Land Purchase with Ha'avara Monies*. Another use found for monies deposited in the PALTREU bank accounts was the purchase of land in Palestine from its Arab owners for use in the construction of Zionist settlements, including settlements of immigrants from Germany (whose settlements Zionist organizations referred to euphemistically as "middle class settlements"). In such cases, monies deposited in *Sonderkontos I* or *II* were allotted to clearing companies other than *Ha'avara-PALTREU* itself, such as RASSCO, short for the Rural And Suburban Settlement Company. These companies paid the monies allotted to them directly to purchasing organizations, often the Zionist movement's principal land purchase arm, the Jewish National Fund.¹⁶

(6) *Tuition, Maintenance Payments, Pensions, Tourist Allowances, Contributions to Zionist National Funds*. Despite the delays arising from the excess of deposits over export transactions, monies from *Sonderkonto I*

¹⁴ See Ha'avara *Eigenttransfer* Committee, "*Eigenttransfer* Guidelines", CZA, L57/398.

¹⁵ See report on the *Bautransfer* in 1935 (its first year) and 1936: CZA, L57/255/01; "Conditions for Construction-Transfer, Ha'avara Ltd.", August 5, 1936, CZA, L57/398. Section 31 of these Conditions required builders making use of German building materials exported in the *Bautransfer* track to purchase additional such building materials in the main Ha'avara track, i.e., against the payment of Palestinian currency to immigrants from Germany. See also "The *Bautransfer's* Influence on the Palestinian Economy", undated, CZA, L57/311.

¹⁶ See documents in CZA, L57/01/11. For the early history of RASSCO see Amiram Oren, RASSCO and its Activity during the 5th Wave of Immigration to Palestine, in: *Katedra* 55 (1990), pp. 126-160.

were also used, by way of the usual clearing mechanism, to provide: (a) maintenance and tuition payments for about 1,500 German Jewish children and youths, sent to attend school or university in Palestine; (b) the pensions of immigrants who were retired German civil servants or World War I veterans; and (c) allowances for German Jews who made brief visits to Palestine to prepare their immigration.¹⁷ The clearing mechanism was even used to transfer German Jews' contributions to several Zionist National Funds from Germany to Palestine.

(7) *German Exports Worldwide*. By 1936, *Ha'avara*-PALTREU established a second subsidiary, called INTRIA, short for the International Trade and Investment Agency, based in London, for the purpose of finding additional takers, outside the Middle East, for German-made goods. The *Wirtschaftsministerium* approved the use of either German goods or funds in the PALTREU accounts to pay for goods and services supplied outside Germany. These transactions were negotiated and carried out by INTRIA.¹⁸

(8) *Support for German Jewry*. Another use found for the *Ha'avara* clearing mechanism was to provide support to Germany's persecuted Jews. As early as 1935, Jews resident in Palestine could operate the *Ha'avara* mechanism in reverse: they deposited a certain amount of Palestinian Pounds with the *Ha'avara* company of Tel Aviv, and PALTREU paid out the equivalent sum in Reichsmarks, out of its Reichsbank deposits, to the beneficiaries. By 1937, Siegfried Moses, head of the ZVfD (Zionistische Vereinigung für Deutschland), succeeded in expanding this use of PALTREU's cache of immigrant deposits into an international mechanism, operated from London by INTRIA. The clearing mechanism now operated in both directions simultaneously. Donors from outside Germany could now buy '*Ha'avara*-marks' by giving monies to INTRIA, which advertised the support scheme internationally. An equivalent sum in Reichsmarks, taken from the PALTREU Reichsbank accounts, was used to support German Jewry – either specific beneficiaries or the community as a whole – while the funds donors gave to INTRIA were transferred to Palestine and paid out to immigrants. Thus was the *Ha'avara* mechanism used to facilitate Jewish immigration to Palestine and the transfer of Jewish property there, delinking those purposes from the export of German

¹⁷ See Pinner, *Vermögenstransfer nach Palästina*, p. 153; Feilchenfeld, *Five Years of Jewish Immigration*, 6.B. For the use of *Ha'avara* funds to support "*Ahava*" (Hebrew for love), an educational institution in Kiryat Bialik, near Haifa, some of the children attending which emigrated from Germany by way of the *Ha'avara* scheme, see CZA, L57/83/03, L57/83/04.

¹⁸ Feilchenfeld et al., *Haavara-transfer nach Palästina*, p. 61.

goods.¹⁹ Support of German Jews by American donations, transmitted through INTRIA and the *Ha'avara* clearing mechanism as described, continued even after war was declared.

(9) *Analogues: Ha'avara from Poland, Czechoslovakia, Hungary, Romania.*

Finally, the success of *Ha'avara* – bringing 52,000 Jews and more than 9 million Palestinian Pounds to Palestine – stood in stark contrast to the dearth of other immigration opportunities with which European Jews were faced. While attempts were made to establish *Ha'avara* mechanisms for other European countries – Poland, Czechoslovakia, Hungary and Romania – and while fledgling transfer mechanisms were in fact established for the first two, the sums transferred through these mechanisms were relatively insignificant.

Decline from 1937

From late 1937, operating the *Ha'avara* mechanism became steadily more difficult. The Nazi regime now restricted goods which could be exported by way of *Ha'avara* to a limited list, which increased the time lag from deposit to Palestinian payout and the aggregate loss consequent on the transfer; this loss crossed the 50% line some time in 1937 and continued to rise. *Bautransfer* contracts could only now be concluded according to newly restrictive conditions: half the price of German building materials imported into Palestine now had to be paid in Palestinian Pounds rather than Reichsmarks taken from the PALTREU Reichsbank accounts. Moreover, importers of such building materials could now be required to place an additional order for such materials, worth up to 100% of their *Bautransfer*-track order, paid for entirely with Palestinian Pounds. These rule changes were meant to provide Germany with lucrative, Sterling-equivalent currency.²⁰ The changes led to the termination of the *Bautransfer* on January 31, 1938. The same fear of alienating Arab interests which prompted the Germans to restrict the types of goods which could be exported prompted the British Mandate authorities to restrict the hitherto unchecked flow of "Capitalists' Visas". Meanwhile, Nazi persecution was rapidly impoverishing the Jews who remained in Germany, making the *Ha'avara* mechanism less useful to them. One consequence of these

¹⁹ See a scheme of the functioning of "Ha'avara-marks": CZA, L57/79/07; a form application for clearance of Marks for support purposes: CZA, L57/79/05; and a clarification form, to be signed by the support recipient in Germany: CZA, L57/79/06.

²⁰ See Ha'avara standard *Bautransfer* form, dated November 1937, CZA, L57/398.

developments was the establishment of *Altreu*, a parallel trust company focused on organizing fund transfers to accompany Jewish emigration to countries other than Palestine. While the Germans allowed *Altreu* to purchase foreign currency at a 50% discount, the allowance allocated to each emigrant was small.

A Last-Minute Vision

In the autumn of 1938, as the condition of German Jewry became steadily more desperate and the Arab Revolt was raging throughout Palestine, Werner Feilchenfeld, a former manager of Berlin's chamber of commerce who had become General Manager of *Ha'avara*, the Palestinian company, published a German-language booklet entitled *Jüdische Handelspolitik* in Tel-Aviv.²¹ Drawing on the experience of the *Ha'avara* and of the less successful attempts to establish similar arrangements between Palestine and Poland and Palestine and Czechoslovakia, he proposed that the Jewish community in Palestine establish an international '*Ha'avara*' organisation, active vis-à-vis Germany, Poland, Czechoslovakia, Hungary and Romania, each of which had a large population of Jews eager to emigrate. Feilchenfeld proposed that the Jewish Agency establish a *Ha'avara* bureau with the exclusive authority (a) to negotiate and conclude *Ha'avara* agreements vis-à-vis foreign governments, as well as (b) to initiate export transactions and supervise their terms so as to guarantee that quality products are exported, for an attractive price paid in either Palestinian goods or funds deposited by Jewish immigrants. Feilchenfeld's projected international *Ha'avara* bureau was to coordinate the needs of the Palestinian or other markets for import goods with the interests of each group of Jewish immigrants. It was to study the import needs of the Palestinian market, the potential for developing Palestine's agriculture, commerce and industry by way of long-term financing provided through the transfer mechanism, as well as the potential for marketing Jewish-made goods in countries from which Jews were emigrating. Finally, the international *Ha'avara* bureau was to enlist Jewish public opinion for or against imports from each country, correspondingly with that country's cooperation, or lack thereof, with Jewish commercial interests.

Feilchenfeld drew a portrait of a powerful international force, able to bring foreign countries to exempt Jewish-made Palestinian exports from their protectionist trade policies and apply special tax subsidies to those exports. The organisation foreseen by Feilchenfeld was to be as powerful

²¹ Werner Feilchenfeld, *Jüdische Handelspolitik*, Tel Aviv 1938.

vis-à-vis Jewish society as it was vis-à-vis the (often authoritarian) governments of the countries Jews wanted to leave: he noted that the organization should be able to ensure that immigrants suitable for agricultural settlement or the development of industry would be given preferential treatment compared to other prospective Jewish immigrants.

Feilchenfeld's timing was less than ideal: 1939 was to see the decline, and then the end, of *Ha'avara*, not its expansion into a dominating force in European commerce. Even so, the fact that this practical man thought in such terms as late as the autumn of 1938 underlines both the resourcefulness characteristic of *Ha'avara* and its success, unique amid the collapse of European Jewry.