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U.S. Foreign Aid to the Palestinians

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Summary

Since the establishment of limited Palestinian self-rule in the West Bank and Gaza Strip in the mid-1990s, the U.S. government has committed more than \$5 billion in bilateral economic and non-lethal security assistance to the Palestinians, who are among the world's largest per capita recipients of international foreign aid. Successive Administrations have requested aid for the Palestinians in apparent support of at least three major U.S. policy priorities of interest to Congress:

- Promoting the prevention or mitigation of terrorism against Israel from Hamas and other militant organizations.
- Fostering stability, prosperity, and self-governance in the West Bank that may incline Palestinians toward peaceful coexistence with Israel and a “two-state solution.”
- Meeting humanitarian needs.

Since June 2007, these U.S. policy priorities have crystallized around the factional and geographical split between the Fatah-led Palestinian Authority (PA) in the West Bank and Hamas in the Gaza Strip. From FY2008 to the present, annual Economic Support Fund (ESF) assistance to the West Bank and Gaza Strip has averaged around \$400 million, with that amount divided between U.S. Agency for International Development (USAID)-administered project assistance (through grants and contracts) and budget support for the Palestinian Authority (PA). Annual International Narcotics Control and Law Enforcement (INCLE) non-lethal assistance for PA security forces and the criminal justice sector in the West Bank has averaged around \$100 million. In line with Obama Administration requests, baseline funding levels for both ESF (including ESF-Overseas Contingency Operations, or ESF-OCO) and INCLE have declined since FY2013, with FY2017 requested annual assistance amounts of \$327.6 million for ESF and \$35 million for INCLE. Because of congressional concerns that, among other things, U.S. aid to the Palestinians might be diverted to Palestinian terrorist groups, the aid is subject to a host of vetting and oversight requirements and legislative restrictions. Additionally, the United States is the largest single-state donor to the U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

A number of issues relating to U.S. aid to the Palestinians have relevance for Congress, including:

- The general effectiveness of aid and possible impacts of informal congressional holds or potential changes in assistance levels or types within both a regional and an international context.
- Concerns regarding ongoing Israeli-Palestinian violence, the reliability and capacity of U.S.-supported PA security forces, and PA-Israel security coordination.
- If and how to support a PA government approved by Hamas, such as the government that was installed in June 2014 pursuant to a Fatah-Hamas agreement and was partly changed—apparently without Hamas input—in 2015.
- Addressing Palestinian initiatives with respect to international fora such as the United Nations and International Criminal Court (ICC).
- Dealing with the multifaceted security, political, economic, and humanitarian challenges presented by the Gaza Strip.

Even if the immediate objectives of U.S. assistance programs for the Palestinians are met, the long-term utility of U.S. aid in encouraging regional stability and Palestinian economic and political self-sufficiency might depend to some extent on progress toward a political solution that addresses Palestinian national aspirations and Israeli security demands.

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Overview

Since the establishment of limited Palestinian self-rule in the West Bank and Gaza Strip in the mid-1990s, the U.S. government has committed more than \$5 billion in bilateral economic and non-lethal security assistance to the Palestinians in the West Bank and Gaza,¹ who are among the largest per capita recipients of foreign aid worldwide.² U.S. aid to the Palestinians is intended to promote at least three major U.S. policy priorities of interest to Congress:

- Promoting the prevention or mitigation of terrorism against Israel from the Sunni Islamist group Hamas³ and other militant organizations.
- Fostering stability, prosperity, and self-governance that may incline Palestinians toward peaceful coexistence with Israel and a “two-state solution.”
- Meeting humanitarian needs.

Since June 2007, U.S. aid to the Palestinians has occurred within the context of a geographical and factional split between

1. *West Bank/Fatah*: a U.S.- and Western-supported Palestinian Authority (PA) in the West Bank led by President Mahmoud Abbas (who also directs the secular nationalist Fatah faction and the Palestine Liberation Organization, or PLO)⁴; and
2. *Gaza Strip/Hamas*: Hamas de facto control in Gaza.

The split was called into question by an April 2014 agreement between Fatah and Hamas that led to the June 2014 formation of a PA government with nominal sway over PA-controlled areas in both the West Bank and Gaza. None of the government’s ministers are Hamas members, and some positions within the government were reshuffled in July 2015, apparently without Hamas approval.⁵ However, practical control over Gaza’s security and territory has continued to reside with Hamas personnel.

After the West Bank-Gaza split took place in June 2007, the United States boosted aid levels to the Palestinians, with most assistance going in direct support of the PA’s security, governance,

¹ Prior to the establishment of limited Palestinian self-rule in the West Bank and Gaza, approximately \$170 million in U.S. developmental and humanitarian assistance (not including contributions to UNRWA) were obligated for Palestinians in the West Bank and Gaza from 1975-1993, mainly through nongovernmental organizations. CRS Report 93-689 F, *West Bank/Gaza Strip: U.S. Foreign Assistance*, by Clyde R. Mark, July 27, 1993, available on request to Jim Zanotti.

² Net official development assistance per capita figures for countries receiving such assistance for 2011-2013 are available at <http://data.worldbank.org/indicator/DT.ODA.ODAT.PC.ZS>.

³ Hamas has been designated a Foreign Terrorist Organization (FTO), a Specially Designated Terrorist (SDT), and a Specially Designated Global Terrorist (SDGT) by the U.S. government.

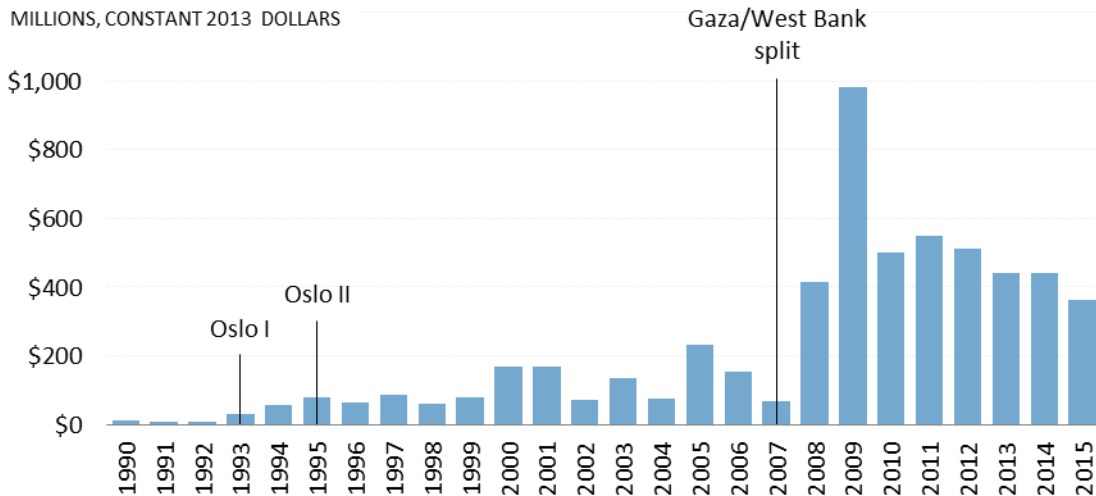
⁴ The PLO is the generally recognized international representative of the Palestinian people. The PA was created pursuant to various Israel-PLO agreements during the Oslo process in the 1990s as the organ of governance for limited Palestinian self-rule in the West Bank and Gaza Strip. Officially, the PLO represents the Palestinian national movement in international bodies, including the United Nations. However, some characterizations of Palestinian efforts in recent years to garner international support for statehood refer to the PA’s involvement because Mahmoud Abbas directs both the PLO and the PA, because some other PA officials (including Foreign Minister Riad Malki) have been publicly involved in the efforts, and because one could argue that the territorial writ of the PA involves it in any issue pertaining to the possible establishment of a Palestinian state within provisional or permanent borders. For the remainder of this report, references to “PLO” initiatives in the United Nations regarding statehood will be construed as referring both to PLO and PA participation, to the extent it exists.

⁵ “PA announces government reshuffle, Hamas calls move a ‘coup,’” *Ma’an News Agency*, July 30, 2015.

development, and reform programs in the West Bank under Abbas (including during the 2007-2013 tenure of former PA prime minister Salam Fayyad), presumably in part to counter Hamas in Gaza. As a result, the post-2007 annual average of U.S. bilateral assistance is substantially greater than the approximate annual average of \$170 million from 2000 to 2007 and \$70 million from 1994 to 1999, years largely marked by the rule of the late Yasser Arafat, who died in late 2004.

From FY2008 to the present, annual Economic Support Fund (ESF) assistance to the West Bank and Gaza Strip has averaged around \$400 million, with that amount divided between U.S. Agency for International Development (USAID)-administered project assistance (through grants and contracts) and budget support for the Palestinian Authority (PA). Annual International Narcotics Control and Law Enforcement (INCLE) non-lethal assistance for PA security forces and the criminal justice sector in the West Bank has averaged around \$100 million. In line with Obama Administration requests, baseline funding levels for both ESF (including ESF-Overseas Contingency Operations, or ESF-OCO) and INCLE have declined since FY2013, with FY2017 requested annual assistance amounts of \$327.6 million for ESF and \$35 million for INCLE.

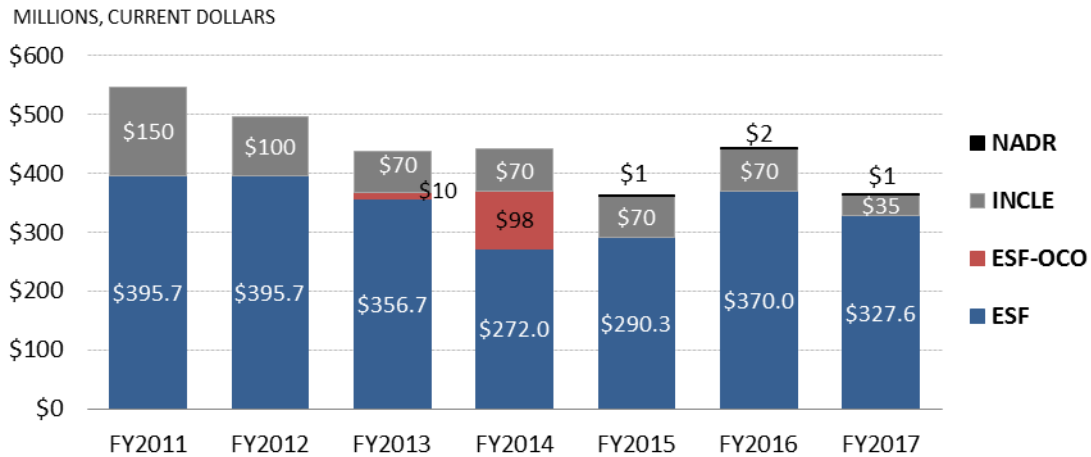
Figure I. Overall U.S. Bilateral Assistance to the Palestinians: 1990-2015



Sources: U.S. State Department and USAID, adapted by CRS.

Notes: Oslo I (the Declaration of Principles) and II (the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip) refer to agreements between Israel and the Palestine Liberation Organization (PLO). Oslo I paved the way for limited Palestinian self-rule in the West Bank and Gaza, and Oslo II established the framework for it. The Gaza/West Bank split of June 2007 occurred when Hamas forcibly seized control in Gaza. In response, PA President Mahmoud Abbas dissolved the PA cabinet that was nominally led by Hamas figures, and appointed a new government with supposed sway over both territories, but de facto limited self-rule only in the West Bank. The large amount of aid for FY2009 is partly due to post-conflict recovery needs from the 2008-2009 Israel-Gaza conflict (Israeli codename Operation Cast Lead).

Figure 2. Detailed U.S. Bilateral Assistance to the Palestinians, FY2011-FY2017



Source: U.S. State Department and USAID, adapted by CRS.

Notes: All amounts are approximate. Amounts stated for FY2017 have been requested but not appropriated. NADR = Nonproliferation, Antiterrorism, Demining and Related Programs, INCLE = International Narcotics Control and Law Enforcement, ESF = Economic Support Fund, OCO = Overseas Contingency Operations.

Additional U.S. humanitarian assistance for Palestinian refugees in Gaza and elsewhere continues through contributions to the U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). U.S. contributions to UNRWA, which have totaled more than \$5.6 billion since UNRWA’s inception in 1950 (see **Table 1** below), have averaged over \$250 million annually since 2007.

In a development with possible implications for U.S. relations with the Palestinians but not directly related to aid, a Manhattan federal court found the PLO and PA civilly liable in February 2015 for six shootings and bombings that took place between 2002 and 2004 in the Jerusalem area during the second Palestinian *intifada* (or uprising). American families with legal standing were awarded \$655.5 million in damages under the court’s verdict, which the PLO and PA have appealed.⁶

Issues for Congress

General Effectiveness of Aid and Holds or Possible Cutoffs

The effectiveness of U.S. assistance to the Palestinians in furthering U.S. policy objectives might be defined by answers to the following questions:

- How does it affect U.S. influence with Palestinians in working toward regional policy objectives?
- How does it address short-term (i.e., humanitarian) needs?
- How does it address longer-term development, governance, and reform efforts?

⁶ Joseph Ax, “U.S. jury orders Palestinian groups to pay attack victims \$218.5 million,” *Reuters*, February 23, 2015.

Such effectiveness is challenged, logistically and strategically, by the shifting and often conflicting interests of Israel and various Palestinian groups. Effectiveness is also challenged by the U.S. interagency process, as well as the need to coordinate activities and assistance with other donor states and with international organizations and coordinating mechanisms such as the European Union (EU), United Nations,⁷ World Bank, the Office of the Quartet Representative,⁸ and the Ad Hoc Liaison Committee.⁹

Since 2011, the Palestinians have faced reprisals from the United States and Israel for various political stances and international initiatives. Such reprisals have included informal congressional holds that occasionally delay disbursement of U.S. aid, and temporary Israeli refusal to transfer tax and customs revenues due the PA.¹⁰ Congressional holds on foreign aid are not legally binding on the executive branch. However, since the late 1970s/early 1980s, successive Administrations have generally deferred to holds placed by Members of pertinent committees. This is part of a process by which the executive branch consults with Congress to provide it with information or otherwise address committees' concerns prior to obligating funds subject to a hold.

The United States and Israel may be reluctant to adopt drastic or permanent measures curtailing aid to the Palestinians for several reasons. One is the possibility of undermining the Fatah-controlled PA to Hamas's benefit. Another is concern about the PA's financial fragility and Israeli reluctance to deal with the disorder that could result from undermining the self-rule institutions of Palestinians. According to one media report, "for years, Israel has acted as a brake on efforts by pro-Israel members of Congress to cut off aid to Palestine during periodic flare-ups," presumably to preserve the PA's stability as a West Bank security provider.¹¹ Whether Israel will maintain this position in the future is an open question. In weighing possible pros and cons of U.S. aid to the Palestinians, some have argued that despite alleged problems with Palestinian leadership, cutting aid—either for the Palestinian Authority specifically or for the Palestinians in general—could increase other countries' political influence at U.S. expense.¹²

⁷ Over the years, U.N. organs have set up a number of bodies or offices, as well as five U.N. peacekeeping operations, which have or had mandates or functions directly related to Palestine or the Arab-Israeli dispute.

⁸ The international Quartet includes the United States, European Union, U.N. Secretary-General's office, and Russia.

⁹ The Ad Hoc Liaison Committee is a coordinating mechanism for Israel, the PA, and all major international actors providing assistance to the Palestinians. It was established in the mid-1990s to facilitate reform and development in the West Bank and Gaza in connection with the Oslo process. Norway permanently chairs the committee, which meets periodically in various international venues and is divided into sectors with their own heads for discrete issue areas such as economic development, security and justice, and civil society.

¹⁰ Under the 1994 Paris Protocol, Israel collects various tax and customs revenues on the PA's behalf. These amounts (generally more than \$1 billion annually) make up a sizeable portion of the PA's budget. Jodi Rudoren, "Tensions Mount as Israel Freezes Revenue Meant for Palestinians," *New York Times*, January 3, 2015.

¹¹ John Hudson, "Defunding Palestine," *foreignpolicy.com*, January 7, 2015. For example, in the prepared House Foreign Affairs Middle East and North Africa Subcommittee hearing testimony of David Makovsky of the Washington Institute for Near East Policy on February 4, 2015, he wrote that "Withholding funding—over time—will lead to the collapse of the security cooperation and ultimately the PA, creating a vacuum that can be filled by radicalism."

¹² For example, in May 2014 congressional hearing testimony, Jonathan Schanzer of the Foundation for the Defense of Democracies stated, "You know, if we zero out Palestinian funding, then here is the big problem. You are going to have someone else come in and they are going to be worse. More than likely, you are going to see the Saudis, the Iranians, the Qataris, the Turks. They are all going to come in and they are not even going to hold the Palestinians to account at all." Transcript from hearing of the House Foreign Affairs Subcommittee on the Middle East and North Africa, May 8, 2014.

Concerns Regarding Ongoing Violence and PA Security Forces

Efforts toward resolving the decades-long Israeli-Palestinian conflict face serious challenges that have implications for U.S. aid to Palestinians. After the most recent U.S.-backed round of peace talks collapsed in April 2014, Israeli-Palestinian disputes intensified in media exchanges and international fora. Tensions and violence in Israel, Jerusalem, and the West Bank have also generally increased. The dynamic appears to be partly linked to specific incidents and the responses they trigger—including what many Palestinian and Arab leaders have claimed to be attempts by some Israelis to change the religious “status quo” at the Temple Mount/Haram al Sharif in Jerusalem—and partly to cyclical patterns of protest and confrontation. Most of the violence since the fall of 2015 has been characterized by Palestinian “lone wolf” attacks against Israelis who often resort to deadly or injurious force in response. For more information, see CRS Report R44245, *Israel: Background and U.S. Relations In Brief*, by Jim Zanotti.

While unrest was intensifying in late September 2015, PA President Abbas gave a speech at the U.N. General Assembly stating that the Palestinians were no longer bound by the 1990s “Oslo” agreements creating the PA.¹³ This fueled speculation over whether the PA might at some point discontinue security cooperation with Israel or even disband itself, and whether Abbas’s apparent expressions of frustration pointed seriously toward imminent change.

In a September 2015 congressional notification,¹⁴ the Obama Administration reduced the amount of economic aid it initially expected to provide to Palestinians in the West Bank and Gaza for FY2015 from \$370 million to \$290 million because of—according to one State Department official—a number of factors, “including unhelpful actions taken by the Palestinians and constraints on our global assistance budget.”¹⁵ March 8, 2016, CRS correspondence with USAID indicated that about \$160 million of this \$290 million remained subject to an informal congressional hold. In an October 20, 2015, letter to PA President Abbas, Chairwoman Kay Granger and Ranking Member Nita Lowey of the House Appropriations Subcommittee on State, Foreign Operations, and Related Programs implored him to refrain from inflaming Israeli-Palestinian tensions and to uphold his prior commitments to nonviolence, and further stated that U.S. assistance to the PA

is predicated on the PA’s adherence to the principles of the Oslo Accords as well as countering terrorism and the incitement of violence.... Therefore our ability to support future aid is severely jeopardized if you continue to abandon direct negotiations with Israel and ignore the necessary steps to achieve security, prosperity, and peace for both sides.¹⁶

In November 2015, the House (H.Res. 293) and Senate (S.Res. 302) both passed resolutions condemning the Palestinian attacks, calling upon PA officials to stop incitement via Palestinian

¹³ The main document establishing PA limited self-rule over the Gaza Strip and parts of the West Bank is the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (known generally as the “1995 Interim Agreement” or “Oslo II”), which was signed by Israel and the PLO on September 28, 1995. The text is available at <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT.aspx>.

¹⁴ U.S. Agency for International Development, FY2015 Congressional Notification #187, September 25, 2015.

¹⁵ Julian Pecquet, “US sends ‘message’ to Abbas with \$80 million aid cut,” *Al-Monitor Congress Pulse*, October 22, 2015.

¹⁶ Text of letter available at http://www.al-monitor.com/pulse/files/live/sites/almonitor/files/documents/2015/congress_letter_abbas.pdf.

media and to take steps to halt the attacks, encouraging continued PA-Israel security cooperation, and calling for the resumption of Israeli-Palestinian peace negotiations.

As violence has continued, some Israeli officials have reportedly questioned the future viability of the PA,¹⁷ and questions have intensified regarding the aging Abbas's remaining tenure and what will happen when he leaves office.¹⁸ In December 2015, Secretary of State John Kerry gave a speech stating that "current trends including violence, settlement activity, demolitions, are imperiling the viability of a two-state solution." In his speech, Kerry also warned of the potential security and economic consequences for Israel without the PA and its some 30,000 security personnel.¹⁹

Coordination by PA security forces in the West Bank—some of whom receive training and equipment from the United States and other countries—with Israeli counterparts is often challenged by domestic popular pressure. One such time is the ongoing period since mid-September 2015 of considerable Israeli-Palestinian tension. To date, the PA forces appear to be working to mitigate attacks in the West Bank areas they patrol,²⁰ though there are indications that strains may be appearing in Israel-PA security coordination and that PA forces may be scaling back their operations and acting more discreetly.²¹ (Israel maintains responsibility for security in East Jerusalem, having annexed the area after the 1967 Arab-Israeli War.) One mid-March 2016 report indicates that "Israel and the Palestinian Authority have [been] holding secret negotiations over the past month for a gradual restoration of Palestinian security control over West Bank cities ... except for so-called ticking-bomb [particularly urgent] cases" in order to "stabilize the situation on the ground and reduce friction between the IDF and the Palestinians."²² The reported talks have allegedly stalled but could resume.²³

As described below (see "U.S. Security Assistance to the Palestinian Authority"), most assessments of the PA forces in the West Bank indicate that, since Western train-and-equip programs became more robust in 2007-2008, the forces have increased in discipline and competence in maintaining overall law and order and in countering terrorist activity.²⁴ However, since December 2015, three members of various PA security forces—acting outside their official duties—have reportedly attacked Israeli soldiers in the West Bank. The head of PA General Intelligence, Majid Faraj (a close Abbas advisor), said in January 2016:

¹⁷ Barak Ravid, "Israeli Minister: Palestinian Authority Will Collapse, the Only Question Is When," *Ha'aretz*, February 29, 2016; Adnan Abu Amer (translated from Arabic), "Is PA on verge of collapse?," *Al-Monitor Palestine Pulse*, December 11, 2015.

¹⁸ Steven J. Erlanger and Rami Nazzal, "Talk Grows About Who Will Succeed Palestinians' Aged Abbas, Seen as Ineffective," *New York Times*, February 28, 2016.

¹⁹ Transcript of Secretary Kerry's remarks at the Brookings Institution's Saban Forum, available at <http://www.state.gov/secretary/remarks/2015/12/250388.htm>.

²⁰ Avi Issacharoff, "PA arrests 19 Hamas members, suspects planning stabbing attacks," *Times of Israel*, October 16, 2015.

²¹ Diaa Hadid and Rami Nazzal, "Shift in Tactics by Palestinians in Policing Own," *New York Times*, October 22, 2015.

²² Barak Ravid, "Israel, Palestinians in Secret Talks to Restore PA Control of West Bank Cities," *haaretz.com*, March 14, 2016. According to this article, the current U.S. Security Coordinator for Israel and the PA, Lieutenant General Frederick Rudesheim, has not participated in the talks, but has been updated on their progress and "occasionally offers suggestions."

²³ *Ibid.*

²⁴ Some PA security force personnel attacked their Israeli counterparts in the early stages of the second intifada (which ran from 2000-2005).

There is a difference between individual acts and the group. In some cases, we may see individuals acting.... Until today, we really are a stable institution. We will continue to do our work. But we really are at a crossroads. We see ourselves as powerless when the Israelis invade where we live.... What can I tell my officers and the people we're supposed to protect?²⁵

Both Faraj and Israeli Defense Minister Moshe Ya'alon assert that PA security personnel have played an integral role in preventing Palestinian attacks against Israelis, with Ya'alon saying in early February 2016 that the PA forces regularly foil about 20% of such plots.²⁶

Aid Supporting a Fatah-Hamas “Unity” or “Consensus” Government

Current conditions regarding aid for a “power-sharing PA government” involving Hamas are as follows. Generally, no aid is permitted for a power-sharing PA government that includes Hamas as a member, or that results from an agreement with Hamas and over which Hamas exercises “undue influence.” This general restriction is only lifted if the President certifies that the PA government, including all ministers, has “publicly accepted and is complying with” the following two principles embodied in Section 620K of the Foreign Assistance Act of 1961, as amended by the Palestinian Anti-Terrorism Act of 2006 (PATA, P.L. 109-446): (1) recognition of “the Jewish state of Israel’s right to exist” and (2) acceptance of previous Israeli-Palestinian agreements (the “Section 620K principles”).²⁷ If the PA government is “Hamas-controlled,” PATA applies additional conditions, limitations, and restrictions on aid.

Under PATA, in the event that Hamas participation in a PA government precludes ministries from receiving aid, the PA President and judiciary (if not Hamas-controlled) may under certain conditions receive aid pursuant to a presidential waiver for national security purposes. Also under PATA, the Palestinian Legislative Council (PLC) is considered to be part of the PA, but the legal consequences if the PLC were to reconvene with the majority Hamas won in 2006 are unclear.

Shortly after the June 2014 PA government (which, as stated above, was partially reshuffled in July 2015) was established, the Administration stated its intent to continue assisting the PA and to carefully monitor the government’s composition and actions.²⁸ Several Members of Congress have expressed skepticism about providing U.S. assistance to any PA government approved by Hamas, and some proposed legislation during the 113th Congress that would have changed the conditions on aid to such a government.²⁹

Conditions regarding U.S. aid to a power-sharing PA government were different in FY2008 and FY2009 appropriations legislation than they have been since FY2010. Under the previous conditions, in the event of a power-sharing PA government formed with Hamas as “a member,”

²⁵ Barbara Opall-Rome, “Keeping ISIS Out of Palestine” *DefenseNews*, January 18, 2016.

²⁶ “Israel demands PA prevent attacks by security personnel,” *Times of Israel*, February 1, 2016.

²⁷ Consolidated Appropriations Act, 2016, P.L. 114-113, §7040(f). The Section 620K principles have some similarity to the principles the so-called international Quartet (United States, European Union, U.N. Secretary-General’s office, and Russia) has required Hamas to meet before accepting dealings with it: (1) recognizing Israel’s right to exist, (2) renouncing violence, and (3) accepting previous Israeli-Palestinian agreements.

²⁸ State Department Daily Press Briefing, June 1, 2014.

²⁹ “U.S. lawmakers want to hold aid to new Palestinian unity government,” *Reuters*, June 2, 2014.

U.S. aid would have been prohibited unless Hamas (as opposed to the government and its ministers) had accepted the Section 620K principles.³⁰

International Initiatives: United Nations and International Criminal Court³¹

Questions regarding the advisability of aid and its effective implementation also exist with regard to initiatives—such as at the United Nations or the International Criminal Court (ICC)—aimed at bolstering international support for Palestinian statehood and/or recognition of Palestinian authority over the West Bank and Gaza.³² Congress has enacted provisions that would restrict aid to the PA as a result of certain international initiatives.

Section 7041(j)(2)(A)(i)(II) of the Consolidated Appropriations Act, 2016 (P.L. 114-113) prohibits U.S. Economic Support Fund (ESF) assistance for the Palestinian Authority (PA) if “the Palestinians initiate an International Criminal Court judicially authorized investigation, or actively support such an investigation, that subjects Israeli nationals to an investigation for alleged crimes against Palestinians.” According to March 8, 2016, CRS correspondence with USAID, ESF assistance spent (via grants and contracts) in the West Bank and Gaza Strip “for the Palestinian people, as opposed to for the benefit of the PA,” would not be deemed “for the PA.”

Palestinian actions in late 2014 and early 2015 enabled the ICC Prosecutor to open a preliminary examination into the “situation in Palestine” to determine “whether there is a reasonable basis to proceed with an investigation” against Israelis, Palestinians, or others.³³ Palestinian leaders have subsequently provided information to the ICC on alleged Israeli crimes regarding both the summer 2014 Israel-Gaza conflict and settlement activity in the West Bank.

Palestinian actions do not ensure any formal ICC investigation or prosecution of alleged ICC crimes. A party to the Rome Statute can refer a situation to the Court and is required to cooperate with the Prosecutor in her investigations, but it is the role of the Prosecutor to determine whether to bring charges against and prosecute an individual. In addition, a case is inadmissible before the ICC if it concerns conduct that is the subject of “genuine” legal proceedings (as described in Article 17 of the Statute) brought by a state with jurisdiction, including a state (such as Israel) that is not party to the Statute.

³⁰ Consolidated Appropriations Act, 2008 (P.L. 110-161), “Economic Support Fund”; Omnibus Appropriations Act, 2009 (P.L. 111-8), §7040(f)(1).

³¹ Matthew C. Weed, Specialist in Foreign Policy Legislation, contributed to this section.

³² PLO Negotiations Affairs Department, “Q&A: Palestine’s Accession to International Treaties,” April 2, 2014, available at <http://nad-plo.org/userfiles/file/fact%20sheets/Q&A%20Accession.pdf>. The PLO claims that the status of the “State of Palestine” as a nonmember observer state of the United Nations—a status it received pursuant to U.N. General Assembly Resolution 67/19 in November 2012—entitles it to join a total of 63 treaties, conventions, and agencies, and that it “will do so in the best interests of its people, as and when it sees fit.” For more information on this resolution and various Palestinian international initiatives, see CRS Report RL34074, *The Palestinians: Background and U.S. Relations*, by Jim Zanotti; CRS Report R43614, *Membership in the United Nations and Its Specialized Agencies*, by Luisa Blanchfield and Marjorie Ann Browne; and CRS Report R42999, *The United Nations Educational, Scientific, and Cultural Organization (UNESCO)*, by Luisa Blanchfield and Marjorie Ann Browne.

³³ ICC Press Release, “The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine,” January 16, 2015. In early January 2015, Palestinian leaders deposited an instrument of accession for the “State of Palestine” to become party to the Rome Statute of the ICC, after declaring acceptance in late December 2014 of ICC jurisdiction over crimes allegedly “committed in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014.” The Rome Statute entered into force for the “State of Palestine” as of April 1, 2015.

The Obama Administration and some Members of Congress have criticized the Palestinians' ICC-related actions.³⁴ These actions, which took place subject to U.S. appropriations legislation identical in substance to Section 7041(j)(2)(A)(i)(II) of P.L. 114-113, may have contributed to some delays in the disbursement of U.S. aid to the Palestinians, but have not curtailed the disbursement of such aid completely.

In the event that the PLO's status in the United Nations or any U.N. specialized agency other than UNESCO approaches the level of membership, two separate provisions from Section 7041(j)(2) of P.L. 114-113 could be triggered. The first, which is subject to a waiver by the Secretary of State for national security reasons, would prevent Economic Support Fund aid (ESF) for the PA. The second could prohibit the President from permitting the PLO to maintain its representative office in Washington, DC. Every six months since the early days of the peace process in the mid-1990s, each successive President has waived a 1987 legal prohibition against the existence of a Washington office representing the PLO.³⁵

These two provisions of Section 7041(j)(2) would be triggered if the Palestinians obtain "the same standing as member states or full membership as a state outside an agreement negotiated between Israel and the Palestinians" in the United Nations or any U.N. specialized agency other than UNESCO. The second provision (regarding the PLO office in Washington) would also be triggered if the Palestinians take "any action with respect to the ICC that is intended to influence a determination by the ICC to initiate a judicially authorized investigation, or to actively support such an investigation, that subjects Israeli nationals to an investigation for alleged crimes against Palestinians." If the second provision is triggered, a presidential waiver would only be eligible—after an additional 90 days—if the President certifies to Congress that the Palestinians have entered into "direct and meaningful negotiations with Israel."

Support for Palestinian Terrorists?

Largely because of congressional concerns that U.S. funds might be diverted to Palestinian terrorist groups, aid to Palestinians is subject to a host of vetting and oversight requirements and legislative restrictions (see "Other Selected Conditions, Limitations, and Restrictions on Aid" below).

A number of observers asserted in the past that because money is fungible, any U.S. aid for the PA indirectly supports PA payments supposedly going to some Palestinians (and/or their families) who are imprisoned for or accused of terrorism by Israel.³⁶ In 2014, the Palestinians reportedly shifted the responsibility for making these payments from the PA to the PLO budget, largely in order to defuse concerns among the PA's international donors about perceptions that the donors might be indirectly associated with the prisoner-related payments.³⁷ Since FY2015, annual appropriations legislation has included a provision providing for the reduction of ESF aid for the

³⁴ See, e.g., a January 9, 2015, statement from four Senators at http://www.kirk.senate.gov/?p=press_release&id=1295.

³⁵ Anti-Terrorism Act of 1987 (P.L. 100-204, §1003). Bills proposed in the House (H.R. 4522) and Senate (S. 2537) in February 2016 would, if enacted, place various conditions on the President's waiver authority.

³⁶ See, e.g., Prepared testimony of Edwin Black, "Threats to Israel: Terrorist Funding and Trade Boycotts," House Committee on Foreign Affairs, Subcommittee on Terrorism, Nonproliferation, and Trade, March 5, 2014. As cited elsewhere in the report, Section 7039 of P.L. 114-113, requires the Secretary of State to take all appropriate steps to ensure that ESF assistance for the West Bank and Gaza does not support terrorism, and to terminate assistance to "any individual, entity, or educational institution which the Secretary has determined to be involved in or advocating terrorist activity."

³⁷ Clifford D. May, quoting PA spokesperson Ehab Bessaiso, "MAY: Salaries for terrorists," *Washington Times*, July 1, 2014.

PA “by an amount the Secretary determines is equivalent to the amount expended by the Palestinian Authority as payments for acts of terrorism by individuals who are imprisoned after being fairly tried and convicted for acts of terrorism and by individuals who died committing acts of terrorism during the previous calendar year.”³⁸

The Gaza Strip and Its Challenges

Hamas’s security control of Gaza presents a conundrum for the Abbas-led PA, Israel, and the international community. They have been unable to establish a durable political-security framework for Gaza that assists Gaza’s population without bolstering Hamas. Since Hamas’s 2007 takeover of Gaza, Israeli and Egyptian authorities have maintained strict control over Gaza’s border crossings, with Israel also controlling maritime access to and from the territory.³⁹ Hamas and other Palestinian militant groups used Gaza as a base for their attacks on Israel during the summer 2014 conflict, as they had in two previous conflicts in 2008-2009 and 2012.

Israeli and Egyptian control over access to and from Gaza is ostensibly meant to deny Hamas materials to reconstitute its military capabilities, but also limits commerce and—in some cases—delays humanitarian assistance for Gaza’s largely impoverished population. In many respects, UNRWA and other international organizations and non-governmental organizations take care of the day-to-day humanitarian needs of many of Gaza’s residents.

Observers routinely voice concerns that if current arrangements continue, the massive unemployment and dispiriting living conditions that have persisted and at points worsened since Israel’s withdrawal in 2005 could contribute to further radicalization of the population, decreasing prospects for peace with Israel and for Palestinian unity and increasing the potential for future violence. Such concerns have been exacerbated by reports of links between Gaza-based militants (possibly including some in Hamas) and the Islamic State-affiliated Sinai Province in Egypt.⁴⁰

Other Selected Conditions, Limitations, and Restrictions on Aid

In addition to the provisions discussed above, annual appropriations legislation routinely contains the following selected conditions, limitations, and restrictions on U.S. aid to Palestinians:⁴¹

- *Hamas and Terrorism:* Aid is specifically prohibited from going to Hamas or Hamas-controlled entities, and no aid may be made available for the purpose of recognizing or otherwise honoring individuals who commit or have committed acts of terrorism. Additionally, the Secretary of State is required to take all appropriate steps to ensure that ESF assistance for the West Bank and Gaza does

³⁸ P.L. 114-113, §7041(j)(3).

³⁹ In November 2005, Israel and the PA signed an Agreement on Movement and Access, featuring U.S. and European Union participation in the travel and commerce regime that was supposed to emerge post-Gaza disengagement, but this agreement was never fully implemented. In September 2007, three months after Hamas’s takeover of Gaza, the closure regime was further formalized when Israel declared Gaza to be a “hostile entity.” In 2010, Israel somewhat eased restrictions on imports and on exports headed to destinations other than Israel and the West Bank, but widespread unemployment and poverty persist.

⁴⁰ See, e.g., Alex Fishman, “Hamas is funding Islamic State in Sinai,” *Ynetnews*, December 14, 2015; Ronen Bergman, “The battle over Sinai: ISIS’s next strong force,” *Ynet Magazine*, December 25, 2015.

⁴¹ Current conditions and restrictions for FY2016 are contained in P.L. 114-113, §§7036-7040 and 7041(j).

not support terrorism, and to terminate assistance to “any individual, entity, or educational institution which the Secretary has determined to be involved in or advocating terrorist activity.”⁴²

- *PA Personnel in Gaza*: No aid is permitted for PA personnel located in Gaza.
- *PLO and Palestinian Broadcasting Corporation (PBC)*: No aid is permitted for the PLO or for the PBC.
- *Palestinian State*: No funds may be provided to support a future Palestinian state unless the Secretary of State certifies that the governing entity of the state:
 1. has demonstrated a firm commitment to peaceful coexistence with the State of Israel;
 2. is taking appropriate measures to counter terrorism and terrorist financing in the West Bank and Gaza in cooperation with Israel and others; and
 3. is working with other countries in the region to “vigorously pursue efforts to establish a just, lasting, and comprehensive peace in the Middle East that will enable Israel and an independent Palestinian state to exist within the context of full and normal relationships.”⁴³

This restriction does not apply to aid meant to reform the Palestinian governing entity so that it might meet the three conditions outlined above. Additionally, the President is permitted to waive this restriction for national security purposes.

- *Vetting, Monitoring, and Evaluation*: For U.S. aid programs for the Palestinians, annual appropriations legislation routinely requires executive branch reports and certifications, as well as internal and Government Accountability Office (GAO) audits. These requirements appear to be aimed at, among other things, preventing U.S. aid from benefitting terrorists or abetting corruption, and assessing aid programs’ effectiveness.⁴⁴

Types of U.S. Bilateral Aid to the Palestinians

Project Assistance (Economic Support Fund)

Types of Funding Programs and Aid Since FY2015

Most economic aid to the Palestinians is appropriated through the ESF account and provided by USAID and, to a far lesser degree, the State Department⁴⁵ to implementing partners (both for-profit and nonprofit contractors) operating in the West Bank and the Gaza Strip. Funds are allocated in this program for projects in sectors such as humanitarian assistance, economic

⁴² P.L. 114-113, §7039.

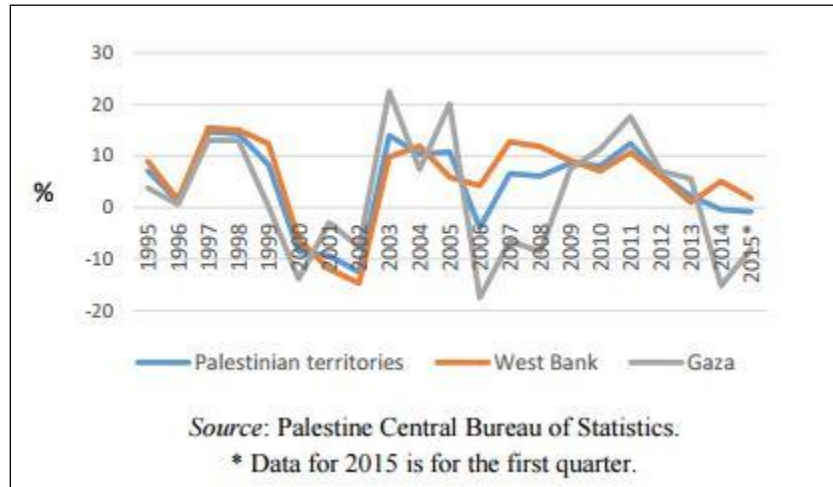
⁴³ P.L. 114-113, §7036(a).

⁴⁴ See, e.g., P.L. 114-113, §§7039-7040. Government Accountability Office (GAO) audits for ESF assistance to the Palestinians are routinely required in annual appropriations legislation. The most recent audit, for FY2012 through FY2014, is available at <http://www.gao.net/assets/680/672684.pdf>.

⁴⁵ For example, see the State Department’s Middle East Partnership Initiative (MEPI) West Bank/Gaza website at http://www.medregion.mepi.state.gov/palestinian_territories.html. As data obtained through USAID’s Foreign Aid Explorer portal (<https://explorer.usaid.gov/>) shows, additional amounts have been provided to Palestinians in the West Bank and Gaza via the Department of Agriculture and miscellaneous grant programs.

development,⁴⁶ democratic reform, improving water access and other infrastructure, health care, education, and vocational training.⁴⁷ In addition to bilateral U.S. assistance to the Palestinians, some amounts generally are allocated from various foreign assistance accounts for Israeli-Palestinian reconciliation or Arab-Israeli cooperation.⁴⁸

Figure 3. West Bank and Gaza Real GDP Growth: 1995-2015



Source: World Bank

According to February 10, 2016, CRS correspondence with USAID mentioned above (see “Concerns Regarding Ongoing Violence and PA Security Forces”), approximately \$75 million in FY2015 ESF project assistance was released from an informal congressional hold in December 2015,⁴⁹ as follows:

- \$4.2 million for the School Support Program;
- \$4.7 million for the Leadership and Teacher Development Program;
- \$1.2 million for MA in Teaching and Access to Success programs;
- \$5.8 million for youth programs;
- \$13.2 million for the World Food Program;

⁴⁶ For analyses of economic development within a larger context, see World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, September 30, 2015; Neri Zilber, “The business end of Palestinian despair,” *blogs.timesofisrael.com*, March 3, 2016.

⁴⁷ For further detail on the types of projects funded or anticipated to be funded, including specific projects and oversight/monitoring mechanisms for Gaza, see FY2017 Congressional Budget Justification for Foreign Operations, Department of State (Appendix 3), pp. 223-225, 227-229; GAO, *U.S. Assistance to the West Bank and Gaza for Fiscal Years 2012-2014*, GAO-15-823, September 2015.

⁴⁸ In past years Congress recommended that an annual amount from the ESF and Development Assistance accounts (\$10 million in FY2012, for example) be put toward a “New Generation in the Middle East” initiative to “build understanding, tolerance, and mutual respect among the next generation of Israeli and Palestinian leaders.” P.L. 112-74, §7062(f)(2). P.L. 114-113 did not contain such an explicit recommendation for FY2016, though §7060(f) did earmark \$26 million for reconciliation programs generally. Moreover, appropriations of a few million dollars annually generally go toward (1) USAID’s Conflict Management and Mitigation Israeli-Palestinian people to people programs, out of the Bureau of Democracy, Conflict, and Humanitarian Assistance budget; and (2) the Middle East Multilaterals and Middle East Regional Cooperation programs, which support Arab-Israeli cooperation in various research and technical fields.

⁴⁹ The ESF amounts subject to congressional consideration were notified via USAID Congressional Notification #187, September 25, 2015.

- \$38 million for Gaza humanitarian assistance; and
- \$8 million for crossing points.

According to March 8, 2016, CRS correspondence with USAID, slightly more than \$21 million in additional FY2015 ESF project assistance was released from the hold in February 2016, as follows:

- \$16.1 million for the Compete project focused on making the Palestinian private sector more globally competitive; and
- \$5.2 million for the Enhanced Palestinian Justice Program.

To date, no other ESF project assistance for FY2015 or FY2016 appears to have been cleared for obligation.

Vetting Requirements and Procedures

USAID’s West Bank and Gaza program is subject to a specialized vetting process (for non-U.S. organizations and individuals) and to yearly audits intended to ensure that funds are not diverted to Hamas or other organizations classified as terrorist groups by the U.S. government.⁵⁰ This vetting process has become more rigorous since around 2008-2009, presumably in response to allegations that U.S. economic assistance was indirectly supporting Palestinian terrorist groups, and following an internal audit in which USAID reportedly concluded it could not “reasonably ensure” that its money would not wind up in terrorist hands.⁵¹

Palestinian Authority Budget Support (Economic Support Fund)

Budgetary assistance is a part of the U.S. strategy to support the PA in the West Bank. The PA’s dependence on foreign assistance is acute—largely a result of the distortion of the West Bank/Gaza economy over nearly 50 years of Israeli occupation and the bloat of the PA’s payroll since its inception more than 20 years ago. Facing a usual annual budget deficit of hundreds of millions of dollars, PA officials regularly seek aid from the United States and other international sources to meet the PA’s financial commitments. A 2016 World Bank report indicated that the PA has made a substantial fiscal adjustment to reduce the recurrent deficit, but that this adjustment has “not been commensurate with the reduction in aid flows.”⁵² The PA routinely faces crises in

⁵⁰P.L. 114-13, §7039(b) sets forth the legal requirements for vetting: “Prior to the obligation of funds appropriated by this Act under the heading ‘Economic Support Fund’ for assistance for the West Bank and Gaza, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual, private or government entity, or educational institution that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity nor, with respect to private entities or educational institutions, those that have as a principal officer of the entity’s governing board or governing board of trustees any individual that has been determined to be involved in, or advocating terrorist activity or determined to be a member of a designated foreign terrorist organization: *Provided*, That the Secretary of State shall, as appropriate, establish procedures specifying the steps to be taken in carrying out this subsection and shall terminate assistance to any individual, entity, or educational institution which the Secretary has determined to be involved in or advocating terrorist activity.”

⁵¹ Jim Tankersley, “Audit: Terrorists Got U.S. Aid; Agency’s Screening Called Inadequate,” *Chicago Tribune*, November 16, 2007; See also Testimony of Henrietta Fore, then USAID Administrator and Director of U.S. Foreign Assistance, House Appropriations Subcommittee on State, Foreign Operations, and Related Programs Hearing on the Fiscal 2009 Budget for the U.S. Agency for International Development, February 27, 2008.

⁵² International Development Association Program Document for a Proposed Grant in the Amount Equivalent to USD40 Million to the Palestine Liberation Organization (For the Benefit of the Palestinian Authority) for a Palestinian National Development Plan, Development Policy Grant VII, January 14, 2016, pp. 6, 10-12.

finding budgetary funds from donors or lending sources, occasionally even receiving emergency advances from Israel on the tax and customs revenues it regularly collects on the PA's behalf.

From the final year of the George W. Bush Administration until FY2013, the United States provided amounts in aggregate of approximately \$1.2 billion to a PA treasury account for the purpose of paying various PA creditors. According to annual foreign operations appropriations laws, congressionally approved funds for the West Bank and Gaza Strip cannot be deposited in a PA account unless the President submits a waiver to Congress stating that doing so is in the interest of national security, and the Secretary of State certifies that (1) there is a single PA treasury account, civil service roster, and payroll; and (2) "the Palestinian Authority is acting to counter incitement of violence against Israelis and is supporting activities aimed at promoting peace, coexistence, and security cooperation with Israel."⁵³ During the period when transfers were made to the PA's treasury account, the United States retained prior approval of any transactions from that account, along with a power of audit over those funds and a three-year right of refund.⁵⁴

In FY2014, the Obama Administration changed the method by which the United States provides budgetary assistance to the PA. Instead of transferring money to a PA account, U.S. practice is now to make direct payments to PA creditors. Pursuant to this practice, the Obama Administration has provided \$100 million in FY2014 ESF and \$35 million in FY2015 ESF to various PA creditors (Israeli energy companies and East Jerusalem hospitals).⁵⁵ For FY2017, the Administration anticipates that recipients of direct payments will include "East Jerusalem hospitals and private sector fuel suppliers, to enable the PA to continue to provide critical services for all Palestinians."⁵⁶

In October 2014, a USAID communication to a congressional office (subsequently shared with CRS) indicated that the executive branch considers direct payments to PA creditors to be "assistance for the PA," and therefore subject to most of the conditions on such assistance found in annual appropriations legislation.

U.S. Security Assistance to the Palestinian Authority

Aid from the INCLE account has been given to train, reform, advise, house, and provide non-lethal equipment for PA civil security forces in the West Bank loyal to President Abbas.⁵⁷ This aid is aimed at countering militants from organizations such as Hamas and Palestine Islamic Jihad-Shaqaqi Faction, and establishing the rule of law for an expected Palestinian state. In recent years, some of this training and infrastructure assistance has been provided to strengthen and reform the

⁵³ See P.L. 114-113, §7040 ("Limitation on Assistance for the Palestinian Authority"). In the event of a presidential waiver, §7040(d) requires the President to submit a report to the Committees on Appropriations "detailing the justification for the waiver, the purposes for which the funds will be spent, and the accounting procedures in place to ensure that the funds are properly disbursed: *Provided*, That the report shall also detail the steps the Palestinian Authority has taken to arrest terrorists, confiscate weapons and dismantle the terrorist infrastructure."

⁵⁴ USAID FY2013 Congressional Notification #93, July 29, 2013.

⁵⁵ March 8, 2016 CRS correspondence with USAID.

⁵⁶ FY2017 Congressional Budget Justification for Foreign Operations, Department of State (Appendix 3), p. 225.

⁵⁷ Additionally, since FY2015, the Administration has requested amounts from the Nonproliferation, Antiterrorism, Demining and Related Programs (NADR) account. For FY2017 the Administration is requesting \$1 million to support an international non-governmental organization in the clearance of minefields that "have been jointly identified and prioritized for clearance by both Israelis and Palestinians," and to "support mine risk education and survivors' assistance programs for populations in the West Bank affected by the hazards of ERW [explosive remnants of war]." FY2017 Congressional Budget Justification for Foreign Operations, Department of State (Appendix 3), pp. 226-227.

PA criminal justice sector. According to March 10, 2016, State Department correspondence with CRS, no FY2015 or FY2016 INCLE assistance for the West Bank has been obligated to date.

In its FY2017 Congressional Budget Justification, the State Department stated the following in support of its request for \$35 million in INCLE funds for the West Bank:

INCLE funding will continue to build the capacity of the Palestinian Authority (PA) security sector and sustain the capabilities of the PA Security Forces (PASF). Modest programming will support the PA Ministry of Interior to improve its ability to manage and provide oversight over the security forces. To build toward the self-sufficiency of the PASF, emphasis will be placed on technical assistance, including a spectrum of training and limited infrastructure support, along with replenishing worn security force equipment. Programming will also support the justice and corrections sectors to ensure their development keeps pace with the rising performance of the security forces.⁵⁸

After Hamas forcibly took control of the Gaza Strip in June 2007, the office of the U.S. Security Coordinator (USSC) for Israel and the Palestinian Authority (a three-star U.S. general/flag officer, supported by U.S. and allied staff and military officers from the United Kingdom, Canada, and around six other countries) has worked in coordination with the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) to sponsor and oversee training for West Bank-based PA security forces personnel, many of whom have been newly recruited. From 2007 to 2012, nine full PA National Security Forces (NSF)⁵⁹ special battalions and two Presidential Guard (PG)⁶⁰ battalions—constituting more than 6,000 total personnel—received initial training at the Jordan International Police Training Center (JIPTC).⁶¹ Additionally, hundreds of members of the PA Civil Defense (firefighters and other emergency responders) have been trained in Amman at the Jordanian Academy of Civil Protection.⁶²

Following the completion of initial training for newly formed PA security force battalions, the USSC/INL program reportedly shifted to a less resource intensive “advise and assist” role alongside its efforts to assist the PA in improving the functioning of its criminal justice system. The self-described USSC/INL role is to help PA security forces “develop indigenous readiness, training, and logistics programs and the capability to maintain/sustain their force structure readiness and infrastructure.”⁶³

The USSC/INL security assistance program exists alongside other assistance and training programs provided to Palestinian security forces and intelligence organizations by various other

⁵⁸ For more details, see FY2017 Congressional Budget Justification for Foreign Operations, Department of State (Appendix 3), pp. 225-227, 229.

⁵⁹ The NSF (with approximately 8,000 active personnel), the organization that receives the greatest amount of training and other resources as a result of U.S. INCLE assistance, is considered by many Palestinians to be analogous to a national army—housed in barracks, classified by military rank, and subject to a military-style command structure.

⁶⁰ The PG's main purposes are to protect the PA President and other VIPs, to respond to crises, and to protect official PA facilities.

⁶¹ Neither NSF nor PG personnel possess the legal authority to make arrests when tasked with law and order missions. Therefore, they generally operate as strategic reinforcements and force protection for the organizations empowered to make arrests—the Palestinian Civil Police (PCP, with approximately 7,200 active personnel) and two intelligence organizations (the Preventive Security Organization and the General Intelligence Service) that are less visible than the PCP and NSF in day-to-day law and order tasks.

⁶² The information in this paragraph on PA security forces training in Jordan was provided to CRS on January 14, 2013, by a senior Western official based in the region.

⁶³ Testimony of Lieutenant General Michael Moeller, then U.S. Security Coordinator for Israel and the PA, Hearing of the House Committee on Foreign Affairs, Subcommittee on the Middle East and South Asia, July 12, 2011.

countries and the European Union (EU).⁶⁴ Some reports have cited the probable existence of covert U.S. assistance programs as well.⁶⁵ By most accounts, the PA forces receiving training have shown increased professionalism and have helped substantially improve law and order and lower the profile of terrorist organizations in West Bank cities.⁶⁶ Israeli officials generally support the USSC/INL program, routinely citing both the PA forces' greater effectiveness as well as increased and sustained levels of Israel-PA security cooperation in the West Bank since the program began. This cooperation, however, is vulnerable to criticism from Hamas and others seeking to undermine Mahmoud Abbas's popular credibility as a champion of Palestinian national aspirations.⁶⁷

Additionally, the aspiration to coordinate international security assistance efforts and to consolidate the various PA security forces under unified civilian control that is accountable to rule of law and to human rights norms remains largely unfulfilled. PA forces have come under criticism for the political targeting of Hamas—in collaboration with Israel and the United States—through massive shutdowns and forced leadership changes to West Bank charities with alleged ties to Hamas members and through reportedly arbitrary detentions of Hamas members and supporters. Also, some PA security personnel have reportedly been involved in criminal activity in a way that has raised questions about the sustainability of law and order in parts of the northern West Bank that have been held out as models of progress.⁶⁸

Some Palestinians and outside observers assert that the effectiveness and credibility of PA operations are undermined by Israeli restrictions—including curfews, checkpoints, no-go zones, and limitations on international arms and equipment transfers—as well as by Israel's own security operations in the West Bank⁶⁹ and at crossings into Gaza. Israel claims that its continuing operations in the West Bank are necessary in order to reduce the threat of terrorism. In a June 2014 speech, Israeli Prime Minister Binyamin Netanyahu expressed skepticism regarding the ability of local Western-trained forces to keep Islamist militants at bay:

[A challenge] we face is to stabilize the area west of the Jordan River security line. In this area of the West Bank no force can guarantee Israel's security other than the [Israel Defense Forces] and our security services. Time after time we have seen how the local forces trained by the West to stop the Islamists cannot be relied upon following the

⁶⁴ In January 2006, the EU Coordinating Office for Palestinian Police Support (EUPOL COPPS) was launched to help train and equip the Palestinian Civil Police. EUPOL COPPS also advises the PA on criminal justice and rule of law issues. According to its August 2015 factsheet, EUPOL COPPS has 69 international staff and 45 local hires in the West Bank, and an annual operating budget of approximately €9.175 million. See <http://eupolcopps.eu>.

⁶⁵ See, e.g., Yezid Sayigh, *Policing the People, Building the State: Authoritarian Transformation in the West Bank and Gaza*, Carnegie Endowment for International Peace, February 2011; Ian Cobain, "CIA working with Palestinian security agents," *guardian.co.uk*, December 17, 2009.

⁶⁶ Other factors contributing to the decline in terrorism may include enhanced Israeli security measures, Palestinian fatigue with or decreasing appetite for organized violence or popular resistance, and various political and economic incentives and other developments.

⁶⁷ For example, Abbas's public statements in June 2014 at an Organization of Islamic Cooperation meeting in Saudi Arabia in support of security coordination with Israel to find three missing Israeli youth in the West Bank (who were later found dead) attracted widespread popular criticism and protest, and even isolated instances of violence, including against PA security forces.

⁶⁸ See, e.g., International Crisis Group, *Buying Time? Money, Guns and Politics in the West Bank*, Middle East Report No. 142, May 29, 2013; Karin Brulliard, "Drama in West Bank city of Jenin shows cracks in Palestinian nation-building project," *Washington Post*, May 25, 2012.

⁶⁹ These operations underscore the fact that the Israeli-Palestinian agreements that authorized the creation of Palestinian security forces in the 1990s in areas of limited Palestinian self-rule contained clauses that preserved Israel's prerogative to conduct operations in those areas for purposes of its own security.

departure of those Western forces. This is what happened with the Lebanese army vis-à-vis Hezbollah following Israel's departure from Lebanon; this is what happened in Gaza when the Palestinian Authority forces were defeated by Hamas after Israel's withdrawal; and this is what is happening now in Iraq following the departure of American forces.⁷⁰

As mentioned above (see “Concerns Regarding Ongoing Violence and PA Security Forces”), recurring Palestinian attacks on Israelis in Israel, Jerusalem, and the West Bank have raised questions about the reliability and effectiveness of the PA security forces and the future of PA-Israel security coordination. Nevertheless, according to one Israeli journalist, “Both Jerusalem [the Israeli government] and Ramallah [the PA] see security coordination as key to keeping the West Bank from falling to more extreme elements and terror groups.”⁷¹

U.S. Contributions to UNRWA

Overview

The United States is the largest single-state donor to UNRWA. According to UNRWA's website, its mandate from the U.N. General Assembly is to “provide relief, human development and protection services to Palestine refugees and persons displaced by the 1967 hostilities in its fields of operation: Jordan, Lebanon, the Syrian Arab Republic, West Bank and the Gaza Strip.”⁷² “Palestine refugees” include original refugees from the 1948 Arab-Israeli War and their descendants—now comprising approximately 5.2 million Palestinians in the places listed above. U.S. contributions to UNRWA—separate from U.S. bilateral aid to the West Bank and Gaza—come from the Migration and Refugee Assistance (MRA) account (including some amounts designated as MRA-Overseas Contingency Operations assistance, or MRA-OCO) and, in exceptional situations, the Emergency Refugee and Migration Assistance (ERMA) account. These contributions are managed by the State Department's Bureau of Population, Refugees, and Migration (PRM). Since UNRWA's inception in 1950, the United States has provided the agency with more than \$5.6 billion in contributions (see **Table 1** below). Other refugees worldwide fall under the mandate of the U.N. High Commissioner for Refugees (UNHCR).

The budget for UNRWA's core programs (general fund or program budget) is funded mainly by Western governments, international organizations, and private donors.⁷³ Core programs include providing food, shelter, education, medical care, microfinance, and other humanitarian and social services to designated beneficiaries. In November 2015, the organization, which is primarily funded by voluntary donor contributions, projected a core budget revenue shortfall for 2016 of \$81 million, after having engaged in an urgent round of cost-cutting and donor solicitations to

⁷⁰ Translated transcript of remarks by Prime Minister Netanyahu at the Institute for National Security Studies, Tel Aviv, Israel, June 29, 2014.

⁷¹ Avi Issacharoff, “PA, Israeli officials meet to discuss shared security concerns,” *Times of Israel*, February 15, 2016.

⁷² According to a 2010 article by the chief of UNRWA's international law division, “UNRWA does not have a constituent instrument (unlike the World Health Organization [WHO]) or a statute (unlike the Office of the United Nations High Commissioner for Refugees [UNHCR]); its mandate is not conveniently stated in one place and must be derived from all relevant resolutions and requests.” Lance Bartholomeusz, “The Mandate of UNRWA at Sixty,” *Refugee Survey Quarterly*, vol. 28, nos. 2 and 3, 2010.

⁷³ According to statistics culled from UNRWA's website, U.S. contributions in 2014 constituted approximately 24% of the UNRWA core budget (general fund) and 31% of the total budget. Aggregate contributions from the European Union and European states (including both EU members and nonmembers) and regions constituted approximately 52% of the core budget and 36% of the total budget. Aggregate contributions from Muslim-majority countries and Muslim organizations constituted approximately 3% of the core budget and 18% of the total budget.

make up a \$101 million shortfall in 2015.⁷⁴ UNRWA also creates special funds for pressing humanitarian needs and additional activities, and these funds also are regularly underfunded. Total U.S. contributions to UNRWA totaled \$390.5 million for FY2015 (\$175 million for the general fund, \$215.5 million for emergency funds and additional activities).⁷⁵ According to CRS correspondence with PRM, \$171.1 million in FY2016 contributions (all from the MRA-OCO account) have been announced as of February 18, 2016 (\$80 million for the general fund or program budget, \$91.1 million for emergency funds in West Bank/Gaza and Syria).

Table 1. Historical U.S. Government Contributions to UNRWA

(in \$ millions)

Fiscal Year(s)	Amount	Fiscal Year(s)	Amount
1950-1989	1,473.3	2003	134.0
1990	57.0	2004	127.4
1991	75.6	2005	108.0
1992	69.0	2006	137.0
1993	73.8	2007	154.2
1994	78.2	2008	184.7
1995	74.8	2009	268.0
1996	77.0	2010	237.8
1997	79.2	2011	249.4
1998	78.3	2012	233.3
1999	80.5	2013	294.0
2000	89.0	2014	398.7
2001	123.0	2015	390.5
2002	119.3	2016	171.1
		TOTAL	5,636.1

Source: U.S. State Department.

Notes: All amounts are approximate.

Until the 1990s, Arab governments refrained from contributing to UNRWA's budget in an effort to keep the Palestinian refugee issue on the international agenda and to press Israel to accept responsibility for their plight. Since then, several Arab states have made relatively modest annual contributions toward UNRWA's core activities, while donating more generously to emergency funds and other activities.⁷⁶ For 2015, however, half the core budget shortfall of \$101 million was

⁷⁴ Pierre Krähenbühl, "Speech by UNRWA Commissioner-General at the General Assembly Fourth Committee," UNRWA website, November 10, 2015.

⁷⁵ CRS email correspondence with State Department official, February 18, 2016. According to this correspondence, approximately \$73 million of the FY2015 contributions came from the MRA account, with the remaining \$317.5 million coming from MRA-OCO. Among the \$215.5 million for emergency funds and additional activities, \$95 million went to a West Bank/Gaza emergency appeal, about \$97.5 million to a Syria appeal, \$20 million for Gaza reconstruction, \$2 million to a "Restoring Dignity" appeal for Lebanon, which assists Nahr al Bared residents who remain displaced, and approximately \$1 million for a "Safe from the Start" program to prevent and respond to gender-based violence.

⁷⁶ See footnote 73.

urgently made up—in response to UNRWA solicitations—by contributions from three Arab Gulf states (Saudi Arabia, Kuwait, and the United Arab Emirates).⁷⁷

In Gaza, most observers acknowledge that the role of UNRWA in providing basic services (i.e., food, health care, education) takes much of the burden off the PA and Hamas personnel who officially or unofficially hold sway in the territory in either a governing or a security capacity. As a result, some complain that this amounts to UNRWA's enabling of the Palestinians and argue that the organization's activities should be discontinued or scaled back. This is in addition to critics who question UNRWA's existence because they believe it perpetuates Palestinian dependency and resentment against Israel.⁷⁸ However, many others, U.S. and Israeli officials included, assert that UNRWA plays a valuable role by providing stability and serving as the eyes and ears of the international community in Gaza. They generally characterize UNRWA's continued presence in Gaza and its other fields of operation as preferable to the uncertain alternative that might emerge if UNRWA were removed from the picture,⁷⁹ presumably at least partly because Hamas or other groups appear incapable of adequately addressing the needs of the refugees who comprise approximately two-thirds of Gaza's population.

Syria's ongoing conflict has significantly affected the more than 500,000 Palestinian refugees that were based there at the outset of the conflict in 2011. UNRWA has sought and continues to seek emergency funding to address these refugees' needs. According to the "Syria Crisis" portal on UNRWA's website as of February 26, 2016:

An estimated 450,000 of the 560,000 refugees registered with UNRWA in Syria remain inside the country; over two thirds (280,000 people) are internally displaced and an estimated 95 per cent (430,000) are in need of sustained humanitarian assistance. This includes tens of thousands of Palestinians who are trapped in areas of active conflict, such as Yarmouk or Khan Eshieh in Damascus or Muzeirib and Jillin in Dera'a, with extremely constrained access to humanitarian assistance.

Of those who have been forced again into exile, around 42,000 have fled to Lebanon and more than 17,000 to Jordan. The vast majority are living a precarious, marginalized existence, unable to regularize their legal status or access civil registration procedures and basic social services. They are largely dependent on UNRWA for basic subsistence needs, including food and shelter, as well as basic education and health care.

Some Palestinian refugees in Syria have been killed or injured, and some have reportedly taken part in the conflict. Future events could exacerbate or mitigate the dilemma of Palestinian refugees in Syria, with potential implications for UNRWA needs assessments.

⁷⁷ Krähenbühl, op. cit.

⁷⁸ See, e.g., Michael S. Bernstam, "The Palestinian Proletariat," *Commentary*, December 2010.

⁷⁹ See FY2017 Congressional Budget Justification for Foreign Operations, Department of State (Appendix 2), p. 146: "[UNRWA] remains an indispensable counterweight to extremism and a force for stability in the region"; FY2016 Congressional Budget Justification for Foreign Operations, Department of State (Appendix 2), pp. 149-150: "U.S. support for UNRWA directly contributes to the U.S. strategic interest of meeting the humanitarian needs of Palestinians, while promoting their self-sufficiency. UNRWA plays a stabilizing role in the Middle East through its assistance programs, serving as an important counterweight to extremist elements. Given UNRWA's unique humanitarian role in areas where terrorist organizations are active, the U.S. Department of State continues to monitor UNRWA closely to ensure that it takes all possible measures to keep terrorists from benefitting from U.S. government funding." See also Baruch Spiegel, "Jerusalem's Surprisingly Good Relations with UNRWA," *Middle East Quarterly*, vol. XIX, no. 4 (Fall 2012), pp. 61-66.

Issues for Congress

Israeli officials and other observers periodically criticize UNRWA for various reasons. For example, some characterize the organization's vetting procedures as insufficient or flawed,⁸⁰ and some claim that it engages in "one-sided political advocacy."⁸¹ UNRWA's website states that its role encompasses "global advocacy for Palestine refugees" in addition to the provision of assistance and protection. UNRWA's officials maintain that it fulfills its mandate as well as can be expected under challenging circumstances (i.e., UNRWA's lack of a robust policing capability and other operational limitations, political pressures, and security concerns).⁸²

Vetting of UNRWA Contributions

The primary concern raised by some Members of Congress is that U.S. contributions to UNRWA might be used to support terrorists. Section 301(c) of the 1961 Foreign Assistance Act (P.L. 87-195), as amended, says that "No contributions by the United States shall be made to [UNRWA] except on the condition that [UNRWA] take[s] all possible measures to assure that no part of the United States contribution shall be used to furnish assistance to any refugee who is receiving military training as a member of the so-called Palestine Liberation Army or any other guerrilla type organization or who has engaged in any act of terrorism."

A May 2009 GAO report said that, since a previous GAO report in 2003, UNRWA and the State Department (aka State) had strengthened their policies and procedures to conform with Section 301(c) legal requirements, but that "weaknesses remain."⁸³ Neither report found UNRWA to be in noncompliance with Section 301(c), and to date, no arm of the U.S. government has made such a finding. In November 2009, State and UNRWA signed a nonbinding "Framework for Cooperation" for 2010. The document agreed that, along with the compliance reports UNRWA submits to State biannually, State would use 15 enumerated criteria "as a way to evaluate" UNRWA's compliance with Section 301(c). State has signed a similar document with UNRWA in each subsequent year.⁸⁴

According to the State Department, "Every six months, UNRWA checks the names of the approximately 5.2 million registered Palestinian refugees, other persons registered to receive UNRWA services, UNRWA staff members, and persons and non-state entities to/from which UNRWA has made/received payments, including suppliers, microfinance loan recipients, and other third parties, against the Consolidated United Nations Security Council Sanctions List. To date, there have been no matches."⁸⁵ UNRWA has said that it is unable to screen those of its

⁸⁰ James G. Lindsay (former general counsel for UNRWA), *Fixing UNRWA: Repairing the UN's Troubled System of Aid to Palestinian Refugees*, Washington Institute of Near East Policy, Policy Focus #91, January 2009; James Phillips, "The Gaza Aid Package: Time to Rethink U.S. Foreign Assistance to the Palestinians," The Heritage Foundation WebMemo No. 2333, March 9, 2009.

⁸¹ Ibid. Israel Ministry of Foreign Affairs Statement: "Israel calls on UNRWA to refrain from one-sided political advocacy," August 27, 2013.

⁸² A direct written rebuttal by Israeli academic Maya Rosenfeld to the former UNRWA general counsel's 2009 article was carried by UNRWA's website and is currently available at <http://lists.mcgill.ca/scripts/wa.exe?A2=ind0902c&L=fogfnet&P=806>.

⁸³ GAO, *Measures to Prevent Inadvertent Payments to Terrorists...*, op. cit.

⁸⁴ "Framework for Cooperation Between UNRWA and the Government of the United States of America for 2016," available at <http://www.state.gov/documents/organization/250988.pdf>. The 15 enumerated criteria are found in Annex 1 of the framework document.

⁸⁵ CRS email correspondence with State Department official, March 8, 2016. This list does not include a number of groups designated as terrorist organizations by the United States, such as Hamas or Hezbollah, but UNRWA officials (continued...)

beneficiaries who are displaced persons from the 1967 war because it does not collect information on those persons.⁸⁶

In 2013 correspondence with CRS, a UNRWA official said that UNRWA provides assistance “in the context of its humanitarian mandate, meaning that agency policy is generally not to deny education or primary healthcare benefits.” The official also said that if a refugee was denied benefits because of suspected militant or terrorist activities or ties, his or her child “would not be disqualified from attending an UNRWA school.”⁸⁷

Legislation and Oversight

Critiques of UNRWA’s operations are routinely raised, and some Members of Congress have supported legislation or resolutions aimed at increasing oversight of the agency, strengthening its vetting procedures, and/or capping U.S. contributions.⁸⁸

Some observers assert that UNRWA, by providing services to descendants of the original Palestinian refugees from 1948—by one count, the number of registered refugees has increased seven-fold since then—has effectively become “a silent partner to the Palestinian leadership” in perpetuating the refugee issue.⁸⁹ UNRWA officials insist—despite some observers’ assertions to the contrary⁹⁰—that established “principles and practice—as well as realities on the ground—clearly refute the argument that the right of return of Palestine refugees would disappear or be abandoned if UNHCR [the U.N. High Commissioner for Refugees, instead of UNRWA] were responsible for these refugees.”⁹¹ In September 2013 correspondence with CRS on this issue, a State Department official stated:

(...continued)

did say in the 2009 GAO report that if notified by U.S. officials of potential matches, they would “use the information as a trigger to conduct their own investigation,” which led to the report’s recommendation that the State Department consider screening UNRWA contractors. GAO, *Measures to Prevent Inadvertent Payments to Terrorists...*, op. cit. State says that “UNRWA makes publicly available the names of all recipients of UNRWA contracts of annual aggregate value of \$100,000 or more. The Department of State screens these names against the U.S. list of prohibited organizations each quarter. To date, there have been no matches.” CRS email correspondence with State Department official, March 8, 2016.

⁸⁶ GAO, *Measures to Prevent Inadvertent Payments to Terrorists...*, op. cit. In 2006, an organization that advocates for Palestinian refugees estimated the total number of 1967 displaced persons to be between 800,000 and 850,000. See BADIL Resource Center for Palestinian Residency & Refugee Rights, *Survey of Palestinian Refugees and Internally Displaced Persons 2004-2005*, May 2006.

⁸⁷ CRS email correspondence with UNRWA official, September 23, 2013.

⁸⁸ For example, H.R. 3829 (UNRWA Anti-Incitement and Anti-Terrorism Act) would, if enacted, require that any contribution made to UNRWA be subject to recent certification by the Secretary of State that UNRWA is complying with various self-policing and transparency-promoting activities, including measures UNRWA takes to prevent assistance or availability of its facilities to terrorists, and measures it takes to promote tolerance and employees’ impartiality. Past legislative proposals and report language have contained similar certification or reporting requirements.

⁸⁹ Jonathan Schanzer, “Status Update,” *foreignpolicy.com*, May 21, 2012.

⁹⁰ Josh Rogin, “Senate fight today over Palestinian ‘refugees,’” *thecable.foreignpolicy.com*, May 24, 2012: “UNRWA has been using a definition that includes descendants of refugees while other U.N. bodies do not include descendants in their definition.” See also Jennifer Rubin, “Is the U.N. making the Palestinian refugee problem worse?,” *washingtonpost.com*, May 23, 2012.

⁹¹ “Exploding the myths: UNRWA, UNHCR and Palestine refugees” (quoting UNRWA spokesman Chris Gunness), *maannews.net*, June 27, 2011. The article quotes Gunness as saying that “in all cases, refugees and their descendants retain the status of refugees until that status lapses through the achievement of a just and lasting solution.”

In protracted refugee situations, refugee groups experience natural population growth over time. UNHCR and UNRWA both generally recognize descendants of refugees as refugees for purposes of their operations; this approach is not unique to the Palestinian context. For example, UNHCR recognizes descendants of refugees as refugees in populations including, but not limited to, the Burmese refugee population in Thailand, the Bhutanese refugee population in Nepal, the Afghan population in Pakistan, and the Somali population seeking refuge in neighboring countries.

The United States' acceptance of UNRWA's method of recognizing refugees is unrelated to the final status issue of Palestinian refugees, which is to be resolved in negotiations between the parties.

Opposing views on this subject highlight a broader debate over responsibility for the multi-generational Israeli-Palestinian conflict and whether attempts to resolve the refugee problem separately are advisable and more likely either to lead to or work against an overall resolution that addresses both parties' interests.⁹² In 2012, the Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs approved a reporting requirement in connection with FY2013 appropriations that, if enacted, would have required the Secretary of State to differentiate between the original 1948 refugees and their descendants. In a letter to the subcommittee, the State Department objected, asserting that this requirement would be "viewed around the world as the United States acting to prejudge and determine the outcome of this sensitive issue."⁹³

During the summer 2014 Israel-Gaza conflict, some Members of Congress expressed concerns regarding reports that some UNRWA sites in Gaza may have been used illicitly by Palestinian militants to store weapons. U.N. Secretary-General Ban Ki-moon established a board of inquiry to examine whether such illicit use occurred and whether some UNRWA sites in Gaza were damaged by Israel militarily. The board of inquiry submitted its report to Secretary-General Ban in February 2015, and on April 27, 2015, the Secretary-General's office transmitted a summary of the report to the U.N. Security Council. In an accompanying cover letter, Ban deplored that "at least 44 Palestinians were killed as a result of Israeli actions and at least 227 injured at United Nations premises being used as emergency shelters."⁹⁴ Ban also stated that it was unacceptable that Palestinian militant groups used some empty United Nations schools to "store their weaponry and, in two cases, probably to fire from," and that he was determined to ensure that no such incident recurs.

Conclusion

Implementing U.S. bilateral assistance programs for the West Bank and Gaza and making UNRWA contributions routinely present challenges due to regional political uncertainty, ongoing Israeli-Palestinian disputes, concerns over the composition and behavior of the PA government, and concerns that aid might be diverted to Palestinian terrorist groups. Nevertheless, the PA remains dependent on external donor assistance to meet its budgetary needs—especially its large public payroll—and it also seeks foreign investment to jumpstart its private sector.

⁹² See, e.g., Hilary Leila Krieger, "Palestinians: US refugee bill may delay peace," *jpost.com*, June 5, 2012; Leila Hilal, "Israeli Leader Wrongly Blames UN and Arab States for Palestinian Refugees," *theatlantic.com*, February 21, 2012; "Leila Hilal's bizarre defense of UNRWA," *jpost.com* (Warped Mirror Blog), June 7, 2012.

⁹³ Text of letter dated May 24, 2012, from Deputy Secretary of State Thomas Nides to Senator Patrick Leahy, Chairman of the Senate Appropriations Subcommittee on State, Foreign Operations, and Related Programs available at <http://www.scribd.com/doc/94703915/DepSec-State-Opposes-Kirk-Amdt#download>.

⁹⁴ Text of the summary and cover letter available at <https://www.documentcloud.org/documents/2068300-gaza-board-of-inquiry-report-and-cover-letter.html>.

In assessing whether U.S. aid to the Palestinians has advanced U.S. interests in recent years, Congress could evaluate how aid, either alone or in concert with other policies, has influenced

- overall Israeli-Palestinian relations;
- approaches to preventing or mitigating terrorism patterns and threats;
- the preparation of Palestinians for self-reliance in security, political, and economic matters;
- the promotion of regional stability; and
- the addressing of humanitarian needs.

As part of any such evaluation, Congress could also consider the influence that different aid levels or types, and/or various complementary or alternative policies, might have had in the past or could have in the future on these same issues.

Even if the immediate objectives of U.S. assistance programs for the Palestinians are met, the long-term utility of U.S. aid in encouraging regional stability and Palestinian economic and political self-sufficiency might depend to some extent on progress toward a political solution that addresses Palestinian national aspirations and Israeli security demands.

Congress's assessment of the effectiveness of past aid in the context of U.S. policy priorities might influence its deliberations over

- which aid programs to start, continue, expand, scale back, change, or end; and
- which oversight, vetting, monitoring, and evaluation requirements to apply to various aid programs.

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