



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 over \$4 billion in bilateral 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 to support at least three major U.S. policy priorities of interest to Congress:

- Combating, neutralizing, and preventing terrorism against Israel from the Islamist group Hamas and other militant organizations.
- Creating a virtuous cycle of stability and prosperity in the West Bank that inclines Palestinians—including those in the Hamas-controlled Gaza Strip—toward peaceful coexistence with Israel and prepares them for self-governance.
- Meeting humanitarian needs and preventing further destabilization, particularly in the Gaza Strip.

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. A May 2011 power-sharing agreement between Fatah and Hamas has raised concerns among some Members of Congress about continuing U.S. budgetary and security assistance to a PA government that could be subject to the approval of a U.S.-designated Foreign Terrorist Organization (Hamas) that claims to reserve the right to violently oppose Israel's existence. Prospects for implementation of the power-sharing agreement remain unclear. Some observers question the extent to which Palestinians in the West Bank and Gaza are likely to integrate their political decisionmaking and security practices, and also question the credibility of the one-year timeline put forward for PA presidential and legislative elections. Furthermore, some U.S. lawmakers have raised the possibility that U.S. aid to the PA could be affected by Palestinian efforts to seek international recognition of Palestinian statehood outside of negotiations with Israel, particularly at the United Nations in the fall of 2011.

From FY2008 to the present, annual U.S. bilateral assistance to the West Bank and Gaza Strip has averaged over \$600 million, including annual averages of over \$200 million in direct budgetary assistance and over \$100 million in non-lethal security assistance for the PA in the West Bank. 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). However, whether UNRWA's role is beneficial remains a polarizing question, particularly with respect to its presence in Hamas-controlled Gaza.

Because of congressional concerns that, among other things, funds might be diverted to Palestinian terrorist groups, U.S. aid is subject to a host of vetting and oversight requirements and legislative restrictions. U.S. assistance to the Palestinians is given alongside assistance from other international donors, and U.S. policymakers routinely call for greater or more timely assistance from Arab governments in line with their pledges.

A power-sharing or "unity" PA government possible in the wake of the May 2011 Fatah-Hamas agreement will not be eligible for U.S. aid if Hamas is included in the government and does not change its stance towards Israel—possibly subject to some limited exceptions. Even if the immediate objectives of U.S. assistance programs for the Palestinians are met, lack of progress toward a politically legitimate and peaceful two-state solution could undermine the utility of U.S. aid in helping the Palestinians become more cohesive, stable, and self-reliant over the long term.

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Introduction: Issues for Congress

U.S. aid to the Palestinians is intended to forward at least three major U.S. policy priorities of interest to Congress:

- Combating, neutralizing, and preventing terrorism against Israel from the Islamist group Hamas and other militant organizations.
- Creating a virtuous cycle of stability and prosperity in the West Bank that inclines Palestinians—including those in the Hamas-controlled Gaza Strip—toward peaceful coexistence with Israel and prepares them for self-governance.
- Meeting humanitarian needs and preventing further destabilization, particularly in the Gaza Strip.

Since June 2007, these U.S. policy priorities have crystallized around the geographical and factional split between

- (1) *West Bank/Fatah*: the U.S.- and Western-supported Palestinian Authority (PA) in the West Bank led by President Mahmoud Abbas (who also leads the secular nationalist Fatah faction) and Prime Minister Salam Fayyad (a political independent and former international technocrat); and
- (2) *Gaza Strip/Hamas*: the regime led by Hamas in Gaza, which receives support from Iran and Syria along with substantial non-state support and 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.¹

On May 4, 2011, in Cairo, Egypt, Mahmoud Abbas and Hamas political bureau chief Khaled Meshaal signed a Fatah-Hamas PA power-sharing agreement brokered by Egypt intended to bridge the Palestinian geographical and factional divide and to clear the way for PA presidential and parliamentary elections in a year's time. This could also present a unified Palestinian stance in international negotiations and forums and may have a significant impact on Israeli-Palestinian relations. Analysts are vigorously debating both what the Fatah-Hamas deal signifies about each party's motivations and leverage over the other, as well as what it signifies about greater regional implications given the ongoing political change and unrest around Israel, the West Bank, and Gaza—particularly in Egypt and Syria.

Reports indicate that Fatah and Hamas have agreed in principle to allow a “technocratic” PA government—presumably run by ministers without formal party affiliations—until such time as elections can be held. The factions have also agreed to form a Higher Security Committee under Abbas's leadership, but almost no actual details about how West Bank and Gaza security forces might coordinate have been publicly communicated. As of the end of August 2011, Fatah-Hamas disagreement over the possible continuation of Salam Fayyad as PA prime minister (Fatah supports it, Hamas opposes it) has delayed the formation of a power-sharing government and caused some observers to doubt its likelihood.

¹ For more information on Hamas and these terrorist designations, see CRS Report R41514, *Hamas: Background and Issues for Congress*, by Jim Zanotti.

Whether the possible benefits to Palestinians of fully implementing a power-sharing deal can persuade Fatah and Hamas to overcome their deep differences and distrust of one another, along with their reluctance to risk their respective power bases and claims to legitimacy, is unclear, as is whether any such deal might meet the conditions of the United States and other members of the international Quartet (European Union, United Nations, Russia) regarding international dealings with and aid to a Palestinian entity that includes Hamas in some manner.² Decisions by international donors, including resource-rich Gulf Arab states, could influence Israel's willingness to continue transferring tax and customs revenues it collects on behalf of the PA, as well as how the PA chooses to configure its governing, security, and electoral arrangements. For information on legal conditions on U.S. aid to a PA power-sharing government, see "Major Conditions, Limitations, and Restrictions on Aid," below.

From FY2008 to the present, annual U.S. bilateral assistance to the West Bank and Gaza Strip has averaged over \$600 million, including annual averages of over \$200 million in direct budgetary assistance and over \$100 million in non-lethal security assistance for the PA in the West Bank. The remainder—approximately \$300 million on average per year—is dedicated to project assistance for the West Bank and Gaza through U.S. government grants to non-governmental organizations (NGOs). Much of this assistance is in direct support of PA Prime Minister Salam Fayyad's security, governance, development, and reform programs aimed at building Palestinian institutions in advance of statehood. The post-2007 annual average of U.S. bilateral assistance is substantially greater than the approximate annual average of \$170 million from 2000-2007 and \$70 million from 1994-1999. Despite more robust levels of assistance, the absence of Israeli-Palestinian peace and Hamas's heightened role in Palestinian politics could make effective implementation of lasting aid projects difficult.

Because of congressional concerns that, among other things, U.S. funds might be diverted to Palestinian terrorist groups, this aid is subject to a host of vetting and oversight requirements and legislative restrictions (see "Major Conditions, Limitations, and Restrictions on Aid" below). U.S. assistance to the Palestinians is given alongside assistance from other international donors, and U.S. policymakers routinely call for greater or more timely assistance from Arab governments in line with their pledges.

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 approximately \$4 billion since UNRWA's inception in 1950, have averaged over \$200 million annually since 2007.

Historical Background and Recent Developments

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 \$4 billion in bilateral assistance to the Palestinians in the West Bank and Gaza,³ who are among the largest per capita recipients of

² Those conditions are that Hamas members of a Palestinian power-sharing government (1) recognize Israel's right to exist, (2) renounce violence, and (3) accept previous Israeli-Palestinian agreements.

³ 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 non-governmental 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 (continued...)

foreign aid worldwide.⁴ This assistance has focused on the further development of the Palestinian economic, social services, and civil society sectors; and on strengthening the processes, governance, and security-providing capacities of Palestinian Authority (PA) institutions, through partnerships with U.S. and Palestinian organizations.

Following the death of Yasser Arafat in 2004 and his succession by Mahmoud Abbas as PA President in 2005, Congress and the Bush Administration increased U.S. assistance to the Palestinians. However, when the 2006 Hamas victory in Palestinian Legislative Council elections reversed the renewed sense of U.S. optimism in elected Palestinian leadership, U.S. assistance was restructured and reduced. The United States halted direct foreign aid to the PA but continued providing humanitarian and project assistance to the Palestinian people through international and non-governmental organizations (NGOs). The ban on direct assistance continued during the brief tenure of a Hamas-led power-sharing government (February to June 2007). During that time, the United States and the other members of the international Quartet (the United Nations, the European Union, and Russia) unsuccessfully demanded that Hamas accept the Quartet principles—recognition of Israel’s right to exist, renunciation of violence, and acceptance of previous Israeli-Palestinian agreements.

Subsequent events altered the situation dramatically. In June 2007, Hamas forcibly took control of the Gaza Strip.⁵ PA President and Fatah head Mahmoud Abbas, calling the move a “coup,” dissolved the power-sharing government and tasked the politically independent technocrat Salam Fayyad to serve as prime minister and organize a new PA “caretaker” government in the West Bank. Within days, the United States lifted its economic and political embargo on the PA.

The Bush Administration and Congress then boosted U.S. aid levels in hopes of fostering an economic and security climate conducive to peaceful coexistence between Israel and a future Palestinian state. The revival of Israeli-Palestinian negotiations for a final-status agreement in conjunction with the Annapolis Conference of November 2007 provided further impetus for U.S. economic support of the institutional and societal building blocks deemed crucial for Palestinian self-governance. The Obama Administration has advocated a similar approach. Attempts by both Administrations to broker an Israeli-Palestinian negotiating process that yields a substantive and lasting resolution of core issues in dispute by the parties (borders, security, refugees, the status of Jerusalem, settlements, and water rights) have thus far proven unsuccessful.

Prospects for negotiations may be even dimmer for the near term given heightened Israeli security concerns in the context of region-wide political uncertainty and plans by the PA and Palestine Liberation Organization (PLO) to pursue widespread international recognition of Palestinian statehood, including possibly through action at the United Nations in September 2011.⁶

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⁴ See U.N. Development Programme 2007/08 Human Development Report, Table 18: Flows of Aid, Private Capital and Debt, available at http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf.

⁵ For competing accounts of the events surrounding the Hamas takeover, see CRS Report R41514, *Hamas: Background and Issues for Congress*, by Jim Zanotti.

⁶ For a fuller discussion of these issues, see CRS Report RL34074, *The Palestinians: Background and U.S. Relations*, by Jim Zanotti.

Major Conditions, Limitations, and Restrictions on Aid

Annual appropriations legislation routinely contains the following conditions, limitations, and restrictions on U.S. aid to Palestinians:⁷

- *Hamas*: No aid is permitted for Hamas or Hamas-controlled entities.
- *Power-Sharing PA Government*: No aid is permitted for a power-sharing PA government that includes Hamas as a member unless the President certifies that the PA government, including all ministers, has accepted the following two principles embodied in Section 620K of 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”). If the PA government is “Hamas-controlled,” PATA applies additional conditions, limitations, and restrictions on aid. Under PATA, in the event 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.

It is unclear whether a “technocratic” government of the type anticipated under the May 2011 Fatah-Hamas power-sharing arrangement—whose ministers are not formally aligned with Hamas—would come under the legal definition of a “power-sharing PA government that includes Hamas as a member” or a “Hamas-controlled” PA government and thus trigger these additional conditions on U.S. aid. 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 still unclear.⁸

- *PLO and Palestinian Broadcasting Corporation (PBC)*: No aid is permitted for the PLO or for the PBC.
- *Palestinian State*: No aid is permitted for 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

⁷ Conditions, limitations, and restrictions for FY2011 are contained in the Consolidated Appropriations Act, 2010, P.L. 111-117, Secs. 7034-7040, as these provisions’ application has been extended pursuant to the Department of Defense and Continuing Appropriations Act, 2011 (P.L. 112-10).

⁸ Although a Hamas-majority PLC could technically pass legislation controlling various functions of the PA government, a document summarizing a May 16, 2011, 3D Security Initiative briefing for a congressional staff audience stated that the PLC would not likely play an activist role—absent widespread consensus across factions—given the interim nature of the power-sharing agreement as a placeholder anticipating PA presidential and legislative elections.

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.

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.

- *PA Personnel in Gaza:* No aid is permitted for PA personnel located in Gaza. Although the PA does pay salaries to individuals located in Gaza, USAID says that U.S. direct budgetary assistance to the PA goes toward paying off the PA's commercial debts (see "Direct Assistance to the Palestinian Authority" below).
- *Vetting, Monitoring, and Evaluation:* As discussed throughout this report, 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 are aimed at preventing U.S. aid from benefitting Palestinian terrorists or abetting corruption, ensuring the amenability of Palestinian society and institutions to aid programs, assessing the programs' effectiveness, and monitoring intervening variables (such as aid from international actors).⁹

Types of U.S. Bilateral Aid to the Palestinians

Table I. U.S. Bilateral Assistance to the Palestinians, FY2005-FY2012

(regular and supplemental appropriations; current year \$ in millions)

Account	FY2005	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011	FY2012 ^a
ESF	224.4	148.5	50.0	389.5	776.0	400.4	400.4	400.4
P.L. 480 Title II (Food Aid)	6.0	4.4	19.488	-	20.715	-	-	-
INCLE ^b	-	-	-	25.0	184.0	100.0	150.0	113.0
Total	230.4	153.243	69.488	414.5	980.715	500.4	550.4	513.4

Sources: U.S. State Department, USAID.

Notes: All amounts are approximate; for purposes of this table and this report, "bilateral assistance" does not include U.S. contributions to UNRWA or other international organizations from the Migration and Refugee Assistance (MRA) or Emergency Refugee and Migration Assistance (ERMA) accounts, regardless of how the term is defined in legislation.

a. Amounts stated for FY2012 have been requested but not yet appropriated.

⁹ P.L. 111-117, Secs. 7039-7040, 7042(f). GAO audits are available on the following U.S. aid programs to the Palestinians: (1) Economic Support Fund, including direct assistance to the PA and project assistance (audit for FY2008-FY2009 accessible at <http://www.gao.gov/new.items/d10623r.pdf>), (2) security assistance to the PA through the International Narcotics Control and Law Enforcement account (<http://www.gao.gov/new.items/d10505.pdf>), and (3) contributions to UNRWA through the Migration and Refugee Assistance and Emergency Refugee and Migration Assistance accounts (<http://www.gao.gov/new.items/d09622.pdf>).

- b. INCLE stands for International Narcotics Control and Law Enforcement. INCLE figures do not include \$86.362 million of FY2006 ESF funds reprogrammed into the INCLE account by President Bush in January 2007 (see “Direct Assistance to the Palestinian Authority” below).

Table 2. Proposed Spending Plan for FY2012 Bilateral Assistance

Amount	Purpose
Economic Support Fund (\$400.4 million total) \$200 million \$200.4 million	Direct budgetary assistance to Palestinian Authority (PA) in West Bank Assistance for the West Bank and Gaza (through USAID) ^a <ul style="list-style-type: none"> • \$20 million – governance, rule of law, civil society • \$79.7 million – health, education, social services • \$53.2 million – economic development • \$47.5 million – humanitarian assistance
International Narcotics Control and Law Enforcement (\$113 million total) \$77 million \$36 million	Training, non-lethal equipment, and garrisoning assistance to PA security forces in the West Bank, supporting efforts by the U.S. Security Coordinator Assistance for PA Ministry of Interior and for the justice sector (prosecutors and criminal investigators) to improve performance, efficiency, and inter-institutional cooperation Rule-of-law infrastructure, including courthouses, police stations, and prisons

Source: U.S. State Department, FY2012 Congressional Budget Justification for Foreign Operations (Annex: Regional Perspectives), available at <http://www.state.gov/documents/organization/158268.pdf>.

Notes: All amounts are approximate.

- a. See footnote 11.

Economic Support Fund Project Assistance

Types of Funding Programs

Most aid to the Palestinians is appropriated through the Economic Support Fund (ESF) account and provided by USAID (and, to a far lesser degree, the State Department¹⁰) to U.S. non-governmental organizations (NGOs) operating in the West Bank and the Gaza Strip.¹¹ Funds are

¹⁰ For example, see the State Department’s Middle East Partnership Initiative (MEPI) West Bank/Gaza website at <http://mepi.state.gov/med-region/west-bank-and-gaza.html>.

¹¹ The State Department’s FY2012 Congressional Budget Justification for Foreign Operations (Annex: Regional Perspectives), p. 571, available at <http://www.state.gov/documents/organization/158268.pdf>, stated that “The United States will continue to respond to humanitarian needs in Gaza as they arise, through emergency assistance to the most vulnerable populations through nongovernmental organizations not controlled by Hamas or other foreign terrorist organizations. All assistance programs for Gaza, consistent with legislative requirements, will work through vetted local, U.S., or international nongovernmental organizations to meet U.S. objectives and follow established safeguards that will ensure funding is only used where, how, and by whom it is intended. The United States will similarly continue to work with the Government of Israel to try to develop an effective crossings protocol that improves the flow of (continued...) ”

allocated in this program for projects in sectors such as humanitarian assistance, economic development, democratic reform, improving water access and other infrastructure, health care, education, and vocational training (currently most, if not all, funds for the Gaza Strip are dedicated to humanitarian assistance and economic recovery needs).¹² See **Table 2** above for the Obama Administration's proposed spending plan for FY2012 ESF West Bank/Gaza assistance.

Vetting Requirements and Procedures

USAID subjects its programs worldwide to vetting requirements to ensure the proper use of funds appropriated through its accounts. USAID's West Bank and Gaza program is subject to a specialized vetting process (for non-U.S. organizations) 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.¹³ This vetting process has become more rigorous in recent years in response to allegations that U.S. economic assistance was indirectly supporting Palestinian terrorist groups, and following an internal audit in which USAID concluded it could not "reasonably ensure" that its money would not wind up in terrorist hands.¹⁴

A February 2009 statement from USAID described its revamped vetting procedures as follows:

All NGOs applying for grants from USAID are required to certify, before award of the grant will be made, that they do not provide material support to terrorists.... Before making an award of either a contract or a grant to a local NGO, the USAID West Bank/Gaza Mission checks the organization and its principal officers, directors and other key personnel against lists maintained by the Office of Foreign Assets Control (OFAC) within the U.S. Department of Treasury. The Mission also checks these organizations and individuals through law enforcement and intelligence community systems accessed by USAID's Office of Security. At present, the Mission collects additional information up front in addition to the individual's full [four-part] name, such as a government issued photo-ID number and the individual's date and place of birth.... [USAID's] West Bank/Gaza program possess[es] the most comprehensive partner vetting system for foreign assistance throughout the U.S. Government.¹⁵

(...continued)

humanitarian, recovery, and commercial goods into and out of Gaza without compromising Israel's security."

¹² For further detail on the types of projects funded, see GAO, *Foreign Assistance: U.S. Assistance to the West Bank and Gaza for Fiscal Years 2008 and 2009*, May 14, 2010, available at <http://www.gao.gov/new.items/d10623r.pdf>.

¹³ P.L. 111-117, Sec. 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."

¹⁴ "Audit: Terrorists Got U.S. Aid; Agency's Screening Called Inadequate," *Chicago Tribune*, November 16, 2007; Testimony of Henrietta Fore, USAID Administrator and Director of U.S. Foreign Assistance, House Appropriations Subcommittee on State, Foreign Operations, and Related Programs Holds Hearing on the Fiscal 2009 Budget for the U.S. Agency for International Development, February 27, 2008.

¹⁵ Statement issued by USAID to CRS on February 5, 2009. USAID does not subject U.S. organizations to vetting due to U.S. privacy law concerns. See GAO, *Measures to Prevent Inadvertent Payments to Terrorists Under Palestinian* (continued...)

A May 2009 Government Accountability Office (GAO) report found that USAID had strengthened its antiterrorism policies and procedures in response to recommendations GAO had made in a 2006 report.¹⁶

Direct Assistance to the Palestinian Authority

Budgetary assistance is a major part of the U.S. strategy to support the PA in the West Bank, although some Members of Congress expect better governance and more vigilant action from the PA toward peace with Israel in return.¹⁷ According to annual foreign operations appropriations laws, congressionally approved funds for the West Bank and Gaza Strip cannot be given directly to the PA 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 there is a single PA treasury account, civil service roster, and payroll.¹⁸ Annual appropriations legislation also routinely caps direct U.S. budgetary assistance to the PA (the cap for FY2011 is \$200 million under P.L. 112-10, the Department of Defense and Continuing Appropriations Act, 2011) and places conditions on aid to any power-sharing PA government “of which Hamas is a member” (for further discussion, see “Hamas and a “Unity Government”?” below). Even after money is transferred to the PA’s treasury account, the United States retains prior approval of any transactions from that account, along with a three-year power of audit over those funds.¹⁹

During the final year of President George W. Bush’s Administration, President Bush issued waivers providing \$300 million in direct budgetary assistance to the PA. President Barack Obama has followed the precedent Bush established by authorizing a total of \$500 million in direct budgetary assistance during his first two years in office, as follows:

- In July 2009, \$200 million in ESF money were transferred to the PA in the wake of a presidential waiver issued by President Obama.²⁰

(...continued)

Aid Programs Have Been Strengthened, but Some Weaknesses Remain, GAO Foreign Assistance Report 09-622, May 2009, available at <http://www.gao.gov/new.items/d09622.pdf>.

¹⁶ See GAO, *Measures to Prevent Inadvertent Payments to Terrorists...*, op. cit. A schematic detailing USAID’s vetting process is found on page 42 of the report. GAO did recommend in the report that USAID take steps to ensure that it and its primary contractors use the same rigor at the subcontractor level that they employed in requiring antiterrorism clauses and certifications during their contracting process.

¹⁷ Ileana Ros-Lehtinen, Chairwoman of the House Foreign Affairs Committee, voiced significant concern over the Administration’s provision of direct budgetary assistance to the PA when serving as Ranking Member in November 2010: “It is deeply disturbing that the Administration is continuing to bail out the Palestinian leadership when they continue to fail to meet their commitments, under international agreements and requirements outlined in U.S. law, including dismantling the Palestinian terrorist infrastructure, combating corruption, stopping anti-Israel and anti-Semitic incitement, and recognizing Israel’s right to exist as a Jewish state.” House Foreign Affairs Committee website: “Ros-Lehtinen Opposes Latest U.S. ‘Bailout’ Installment for Palestinian Authority,” November 11, 2010, available at http://republicans.foreignaffairs.house.gov/press_display.asp?id=1630.

¹⁸ See P.L. 111-117, Sec. 7040 (“Limitation on Assistance for the Palestinian Authority”). In the event of a presidential waiver, Sec. 7040 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. The report shall also detail the steps the Palestinian Authority has taken to arrest terrorists, confiscate weapons and dismantle the terrorist infrastructure.”

¹⁹ Congressional briefing with State Department and USAID officials, July 9, 2009.

²⁰ Presidential Determination No. 2009-23.

- In November 2009, \$75 million in budgetary assistance were provided to the PA under the July presidential waiver as an advance on FY2010 ESF funds, pursuant to a continuing resolution (later appropriated pursuant to P.L. 111-117).
- In April 2010, another \$75 million in budgetary assistance from the ESF account were provided to the PA via presidential waiver.²¹
- In November 2010, \$150 million in budgetary assistance were provided to the PA via presidential waiver as an advance on FY2011 ESF funds, pursuant to the Continuing Appropriations Act, 2011 (P.L. 111-242).²²

Direct U.S. budgetary assistance to the PA goes toward paying off its commercial debt, as the following USAID congressional notification language says:

Cash transfer funds will be used in the same manner as previous transfers - to service debt to commercial suppliers and commercial banks. Debt to commercial banks will be debt originally incurred for purchases from commercial suppliers. Each of the payees will be vetted in accordance with USAID West Bank and Gaza existing procedures, as applicable, as a precondition to the transfer of funds by the PA for such payments. Funds may also be used to pay for upcoming purchases from commercial suppliers or reimbursements of recent purchases from the same.²³

U.S. Security Assistance to the Palestinian Authority²⁴

As mentioned above, aid 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 in an effort both to counter militants from organizations such as Hamas and Palestinian Islamic Jihad, and to establish the rule of law for an expected Palestinian state. A small amount of training assistance also has been provided to strengthen and reform the PA criminal justice sector. This assistance has come from the International Narcotics Control and Law Enforcement (INCLE) account—to which a total of \$545.4 million has been appropriated or reprogrammed for use in the West Bank since 2007. The Obama Administration has requested an additional \$113 million in FY2012 INCLE funding (see **Table 2** above).

Since Hamas gained control of the Gaza Strip, the office of the U.S. Security Coordinator (USSC) for Israel and the Palestinian Authority (a three-star U.S. general, supported by U.S. and allied staff and military officers from the United Kingdom, Canada, and seven other countries) has worked in coordination with the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) to help train roughly 1,000 PA Presidential Guard and 3,700 PA National Security Forces (NSF) troops at the International Police Training Center near Amman, Jordan. The USSC and INL reportedly plan to help organize and train a total of approximately 6,000 troops, including 10 500-man NSF battalions (approximately 7 of which have already been

²¹ Presidential Memorandum 2010-06, available at <http://www.whitehouse.gov/the-press-office/presidential-determination-waiver-restriction-providing-funds-palestinian-authority>.

²² Presidential Determination 2011-1, available at <http://www.whitehouse.gov/the-press-office/2010/10/07/presidential-memorandum-providing-funds-palestinian-authority>.

²³ USAID, FY2011 Congressional Notification #1, October 7, 2010.

²⁴ For further information on this subject, see CRS Report R40664, *U.S. Security Assistance to the Palestinian Authority*, by Jim Zanotti.

trained or begun training). At a July 12, 2011, hearing before the House Foreign Affairs Subcommittee on the Middle East and South Asia, Lieutenant General Michael Moeller, the current USSC, outlined some changes in emphasis for the USSC/INL program as FY2012 nears:

This year, we will transition the program into the next phase of our campaign plan: Building institutional capacity. This new phase is less resource intensive as we move away from primarily providing the Palestinian security forces with equipment and infrastructure toward an increasingly direct “advise and assist” role.

In this phase, we will help the PASF develop indigenous readiness, training, and logistics programs and the capability to maintain/sustain their force structure readiness and infrastructure. Additionally, the USSC will continue to support other US rule of law programs that assist the Palestinians to improve the performance of the Justice and Corrections Sectors.

The USSC/INL security assistance program exists alongside other assistance and training programs reportedly provided to Palestinian security forces and intelligence organizations by the European Union and various countries, including probable covert U.S. assistance programs.²⁵ 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.

However, 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.²⁶ Some Palestinians and outside observers also 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 Bank²⁷ and the blockade and closure of crossings around Gaza. Israel claims that its continuing operations in the West Bank are necessary in order to reduce the threat

²⁵ See, e.g., Ian Cobain, “CIA working with Palestinian security agents,” *guardian.co.uk*, December 17, 2009; Yezid Sayigh, “‘Fixing Broken Windows’: Security Sector Reform in Palestine, Lebanon and Yemen,” Carnegie Endowment for International Peace, October 2009, available at http://www.carnegieendowment.org/files/security_sector_reform.pdf.

²⁶ See, e.g., Nathan Thrall, “Our Man in Palestine,” *New York Review of Books*, October 14, 2010, available at <http://www.nybooks.com/articles/archives/2010/oct/14/our-man-palestine/>. For further discussion of human rights concerns surrounding PA security forces in the West Bank and Hamas in Gaza, see CRS Report R40664, *U.S. Security Assistance to the Palestinian Authority*, by Jim Zanotti; Human Rights Watch, *Internal Fight: Palestinian Abuses in Gaza and the West Bank*, July 29, 2008, available at <http://www.hrw.org/en/reports/2008/07/29/internal-fight-0>.

²⁷ See International Crisis Group, *Squaring the Circle: Palestinian Security Reform Under Occupation*, Middle East Report No. 98, September 7, 2010, available at <http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Israel%20Palestine/98%20Squaring%20the%20Circle%20--%20Palestinian%20Security%20Reform%20under%20Occupation.ashx>; International Crisis Group, *Ruling Palestine II: The West Bank Model?* Middle East Report No. 79, July 17, 2008, available at http://www.crisisgroup.org/library/documents/middle_east__north_africa/arab_israeli_conflict/79_ruling_palestine_ii__the_west_bank_model.pdf. 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.

of terrorism. It is unclear how concerns about the effectiveness of the PA security might evolve if anti-Israel protests in the West Bank increase in frequency and intensity amid the region-wide political unrest and heightened Israeli-Palestinian tension—sparked by failed negotiating efforts, a possible U.N. action on Palestinian statehood in September 2011, and periodic outbursts of violence.

How the May 2011 Fatah-Hamas power-sharing agreement may affect the activities of PA security forces in the West Bank is unclear, although it is possible that these activities will remain largely unchanged until either PA presidential and legislative elections can be held or Fatah and Hamas can agree on security coordination for both the West Bank and Gaza. The likelihood of either contingency occurring is seriously questioned by many observers.

U.S. Contributions to UNRWA

Overview

The United States is the largest single-state donor to UNRWA, which provides food, shelter, medical care, and education for many of the original refugees from the 1948 Arab-Israeli war and their descendants—now comprising approximately 4.8 million Palestinians in Jordan, Syria, Lebanon, the West Bank, and Gaza. 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 and the Emergency Refugee and Migration Assistance (ERMA) account. Since UNRWA’s inception in 1950, the United States has provided the agency with approximately \$4 billion in contributions (see

Table 3 below). Other refugees worldwide fall under the mandate of the U.N. High Commissioner for Refugees (UNHCR).

The budget for UNRWA’s core activities (general fund) in 2009 was \$545.6 million, funded mainly by Western governments, international organizations, and private donors.²⁸ UNRWA also creates special emergency funds for pressing humanitarian needs, such as in the wake of the 2008-2009 Gaza conflict. U.S. contributions (which are made from the Migration and Refugee Assistance (MRA) and Emergency Refugee and Migration Assistance (ERMA) accounts managed by the State Department’s Bureau of Population, Refugees, and Migration (PRM)) totaled \$238 million for FY2010 (\$125 million for the general fund, \$113 million for emergency funds and special projects), and totaled \$268 million for FY2009 (\$116 million and \$152 million, respectively) and \$185 million for FY2008 (\$100 million and \$85 million, respectively).

²⁸ According to statistics from UNRWA’s website accessed in 2010, U.S. contributions in 2009 constituted approximately 20% of the UNRWA General Fund budget and 27% of the total budget. Aggregate contributions from the European Commission and European states (including both EU members and non-members) and regions constituted approximately 52% of the total budget.

Table 3. Historical U.S. Government Contributions to UNRWA

(in \$ millions)

Fiscal Year(s)	Amount	Fiscal Year(s)	Amount
1950-1989	1,473.3	2000	89.0
1990	57.0	2001	123.0
1991	75.6	2002	119.3
1992	69.0	2003	134.0
1993	73.8	2004	127.4
1994	78.2	2005	108.0
1995	74.8	2006	137.0
1996	77.0	2007	154.2
1997	79.2	2008	184.7
1998	78.3	2009	268.0
1999	80.5	2010	237.8
		TOTAL	3,899.1

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, most Arab states have made relatively small annual contributions.

In Gaza, most observers acknowledge that the role of UNRWA in providing basic services (i.e., food, health care, education) takes much of the governing burden off Hamas. As a result, some complain that this amounts to UNRWA's enabling of Hamas and argue that its 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.²⁹ However, many others, U.S. and Israeli officials included, believe that UNRWA plays a valuable role by providing stability and serving as the eyes and ears of the international community in Gaza. They generally prefer UNRWA to the uncertain alternative that might emerge if UNRWA were removed from the picture.³⁰

²⁹ See, e.g., Michael S. Bernstam, "The Palestinian Proletariat," *Commentary*, December 2010.

³⁰ See FY2011 Congressional Budget Justification for Foreign Operations, Department of State (Volume 2), p. 86, available at <http://www.state.gov/documents/organization/137936.pdf>: "U.S. government 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."

Issues for Congress

Some observers, including a former general counsel for UNRWA, have criticized UNRWA for, among other things, insufficient or flawed vetting procedures and engaging in political advocacy.³¹ UNRWA and its supporters, however, maintain that UNRWA officials are fulfilling their mandated roles 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).³²

In testimony before the House Appropriations Subcommittee on State, Foreign Operations and Related Programs on April 23, 2009, Secretary of State Hillary Rodham Clinton spoke for the Obama Administration regarding U.S. oversight of contributions to UNRWA:

We have made it clear to UNRWA, the United Nations Relief And Works Agency, that we intend to carefully track any aid that they receive. They have taken additional steps, partly at our urging, to make their process more transparent, consistent with both United Nations commitments and U.S. legislation. They conduct background checks on employees. They share staff lists with us and with Israel. They prohibit staff participation in political activities. They launch investigations upon receiving information from Israel, us, or anyone else about any staff member engaging in inappropriate or illicit activities. They are actually investigating staff members right now who were elected in internal elections within Gaza. And we have pressed them very hard because they have to earn our confidence in this.³³

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 had strengthened their policies and procedures to conform with Section 301(c) legal requirements, but that “weaknesses remain.”³⁴ 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

³¹ See James G. Lindsay, *Fixing UNRWA: Repairing the UN's Troubled System of Aid to Palestinian Refugees*, Washington Institute of Near East Policy Policy Focus #91, January 2009, available at <http://www.thewashingtoninstitute.org/pubPDFs/PolicyFocus91.pdf>. See also 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, available at <http://www.heritage.org/Research/MiddleEast/wm2333.cfm>.

³² A direct written rebuttal by Israeli academic Maya Rosenfeld to the former UNRWA general counsel's critiques was carried by UNRWA's website and is available at http://reteco.it/attachments/5172_Rejoinder%20to%20Lindsay_jan09.pdf.

³³ Transcript of remarks by Secretary of State Hillary Rodham Clinton, House Appropriations Subcommittee on State, Foreign Operations and Related Programs hearing: “Supplemental Request,” April 23, 2009.

³⁴ GAO, *Measures to Prevent Inadvertent Payments to Terrorists...*, op. cit.

finding. The following are some points from the 2009 report and subsequent developments related to it:

- In the 2009 GAO report, State officials said compliance is evaluated based on State's "internal level of confidence that UNRWA has taken all possible measures to ensure that terrorists are not receiving assistance, such as having procedures in place and taking measures to respond to issues that arise."³⁵ State has not defined the term "all possible measures," nor has it defined what would constitute noncompliance with Section 301(c).
- The report said that State had not established written criteria to use in evaluating UNRWA's compliance with Section 301(c), and recommended that State consider doing so.³⁶ In November 2009, State and UNRWA signed a non-binding "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 signed a similar document with UNRWA for 2011.³⁷
- UNRWA said that it screens its staff and contractors every six months and that it screened all 4.6 million Palestinian refugees and microfinance clients in December 2008 (and intends to make this a routine procedure) for terrorist ties to Al Qaeda and the Taliban, pursuant to a list established pursuant to U.N. Security Council Resolution 1267. UNRWA said that it is unable to screen those of its beneficiaries who are displaced persons from the 1967 war because it does not collect information on those persons.³⁸
- UNRWA's UN 1267 terrorist screening list does not include Hamas, Hezbollah, or most other militant groups that operate in UNRWA's surroundings. UNRWA is unwilling to screen its contractors and funding recipients against a list supplied by only one U.N. member state. Nevertheless, UNRWA officials did say 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.³⁹ In response, State says that it now screens quarterly, against the Excluded Parties Lists System (EPLS, which is a list of parties excluded throughout the U.S. government from receiving federal contracts⁴⁰),

the names of vendors of contracts equal to or exceeding \$100,000, as provided by UNRWA. Each of UNRWA's 83 contract awardees of over

³⁵ Ibid.

³⁶ Ibid.

³⁷ "Framework for Cooperation Between UNRWA and the Government of the United States of America for 2011," available at <http://www.state.gov/documents/organization/154856.pdf>. The 15 enumerated criteria are found in Annex 4 of the framework document.

³⁸ 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, available at <http://www.badil.org/en/documents/category/35-publications?download=135%3Asurvey04-05>.

³⁹ GAO, *Measures to Prevent Inadvertent Payments to Terrorists...*, op. cit.

⁴⁰ U.S. General Services Administration website at https://www.acquisition.gov/faqs_whatIs.asp.

\$100,000 for the 2nd Quarter (April-June 2010) was screened twice by separate PRM staff. The analysis resulted in no matches against the EPLS.⁴¹

- UNRWA has established procedures to investigate inappropriate staff behavior. UNRWA [said] that it seeks information from authorities whenever staff are detained, convicted, or refused a permit or targeted by Israeli military forces. UNRWA officials said they share the names of all UNRWA staff annually with the governments of Egypt, Israel, Jordan, Lebanon, Syria, and the Palestinian Authority but have received no information on staff members from these governments.⁴²
- UNRWA officials 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 officials 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.”⁴³

Legislation

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. H.Rept. 111-151 contained a provision from the joint explanatory statement capping contributions to UNRWA at \$119 million for its operations in the West Bank and Gaza from FY2009 funds appropriated pursuant to P.L. 111-32. This provision also required a report from the Secretary of State to the Committees on Appropriations no later than 45 days following the enactment of P.L. 111-32 on various UNRWA self-policing and transparency-promoting activities, including measures UNRWA takes to comply with Section 301(c) of the 1961 Foreign Assistance Act relating to preventing assistance to terrorists.⁴⁴ P.L. 111-117 (incorporated by reference in the relevant particulars for FY2011 by P.L. 112-10) contains the same reporting requirement, without an accompanying cap on contributions.

⁴¹ CRS correspondence with State Department, August 9, 2010.

⁴² GAO, *Measures to Prevent Inadvertent Payments to Terrorists...*, op. cit.

⁴³ Ibid.

⁴⁴ See H.Rept. 111-151, Joint Explanatory Statement of the Committee of Conference, Title XI, “Migration and Refugee Assistance.” Also during the 111th Congress, Representative Ileana Ros-Lehtinen, the Ranking Minority Member on the House Committee for Foreign Affairs, sponsored H.R. 557 (United Nations Transparency, Accountability, and Reform Act of 2009), which included a section entitled “Withholding of United States Contributions to UNRWA,” with over 100 co-sponsors; and Representative Steven Rothman sponsored H.Con.Res. 29 (“Expressing the sense of Congress that the United Nations should take immediate steps to improve the transparency and accountability of the United Nations Relief and Works Agency for Palestinian Refugees (UNRWA) in the Near East to ensure that it is not providing funding, employment, or other support to terrorists”) with over 30 co-sponsors. Both H.R. 557 and H.Con.Res. 29 were referred to the House Committee on Foreign Affairs in January 2009. Ranking Member Ros-Lehtinen subsequently introduced H.R. 5065 (UNRWA Humanitarian Accountability Act) with over 25 co-sponsors. H.R. 5065 is nearly identical to the section pertaining to UNRWA found in H.R. 557, and was referred to the House Committee on Foreign Affairs in April 2010.

Issues for Congress in Determining Future Aid

Hamas and a “Unity Government”?

Although Fatah and Hamas reached an Egyptian-facilitated power-sharing agreement in May 2011, questions over how the agreement might actually be implemented persist. These questions include how PA and Hamas security operations might be integrated, when and how Palestinian presidential and legislative elections might be conducted, and who might occupy PA government positions. Resolutions passed in the summer of 2011 in both the House (H.Res. 268) and Senate (S.Res. 185) questioning the continuation of U.S. aid to a PA government that includes Hamas, although the resolutions do not expressly address whether they contemplate that Hamas’s underlying approval of a PA government that includes formally non-aligned “technocrats” instead of Hamas members would be sufficient to connote its involvement in the government.⁴⁵ Draft legislation for FY2012 appropriations approved by the House Appropriations Subcommittee for State, Foreign Operations and Related Programs in July 2011 would consider a PA government resulting from an agreement with Hamas to have the same legal consequences as full power sharing.⁴⁶

As mentioned above (see “Major Conditions, Limitations, and Restrictions on Aid”), current appropriations legislation prohibits the United States from providing financial assistance to Hamas under any conditions. This law also prohibits U.S. assistance to a PA government with Hamas ministers (subject to possible exceptions for a non-Hamas PA president and judiciary) unless all the government’s ministers accept the “Section 620K principles”: (1) recognition of “the Jewish state of Israel’s right to exist” and (2) acceptance of previous Israeli-Palestinian agreements—named after the section in PATA (P.L. 109-446) that sets them forth. These principles have some similarity to the principles the so-called international Quartet (United States, European Union, United Nations, 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.

Future debates might focus on the following issues:

- Whether a “power of approval” by Hamas over a PA government, absent any further level of participation, should trigger a requirement for that government’s acceptance and compliance with the Section 620K principles.
- Whether to relax or tighten U.S. restrictions on which Palestinian party/ies should be answerable for accepting and complying with the Section 620K principles.

⁴⁵ H.Res. 268 passed on July 7, 2011, by a vote of 407-6, and S.Res. 185 passed on June 28, 2011, by unanimous consent. Both resolutions’ ninth “resolved” clauses support “the position taken by Secretary of State Hillary Clinton on April 22, 2009, that the United States ‘will not deal with or in any way fund a Palestinian government that includes Hamas unless and until Hamas has renounced violence, recognized Israel and agreed to follow the previous obligations of the Palestinian Authority’”.

⁴⁶ Section 7040(f)(1) of the draft legislation, available at http://appropriations.house.gov/UploadedFiles/FY12-SFOPS-07-25_xml.pdf.

- Whether to grant the U.S. President discretion—under certain conditions and/or for specific purposes—to waive aid restrictions relating to a power-sharing government that includes Hamas and does not meet the Section 620K principles.

Assuming that the United States chooses not to engage with and/or contribute to a PA government that includes Hamas, future debates might take place over the degree to which the United States should actively dissuade others in the international community—particularly European and Arab actors—from engagement and contributions.⁴⁷

Questions Regarding a Two-State Solution

Even assuming that the immediate objectives of U.S. assistance to the Palestinians—relieving humanitarian needs in Gaza and improving security and facilitating development in the West Bank—are met, a failure to achieve progress towards a politically legitimate and peaceful two-state solution could undermine the utility of U.S. aid in helping the Palestinians become more cohesive, stable, and self-reliant over the long term.

Many factors may complicate prospects for a negotiated two-state solution:

- Discord within and among Palestinian factions—reflected geographically by (unless and until the May 2011 power-sharing agreement is implemented) divided rule in the West Bank and Gaza and ideologically by Hamas’s refusal to join the PLO in forswearing violent resistance against Israel.
- Conditions that the Israeli government in power since April 2009 under Prime Minister Binyamin Netanyahu has attached to any consideration on its part of the concept of an independent Palestinian state, such as demilitarization and recognition of Israel as the “nation state of the Jewish people.”⁴⁸
- Physical entrenchment of Israeli settlers in the West Bank and of obstacles to Palestinian movement within the West Bank and in and out of both the West Bank and Gaza, together with its political and socioeconomic consequences.
- Possibility of course-changing events—such as a major terrorist attack, a surprise election outcome, an outbreak of war, or pursuit by Palestinians of a political pathway to statehood as an alternative to negotiations with Israel.⁴⁹ This possibility could be exacerbated by the region-wide unrest and political change that has been ongoing since early 2011.

⁴⁷ On the previous occasions in which Hamas participated in the PA government from 2006-2007, the European Union joined the United States in refusing to provide direct assistance to the PA. There are indications, however, that Europeans might be less willing to follow the U.S. lead in the event that another PA government including Hamas is formed. See Muriel Asseburg and Paul Salem, “No Euro-Mediterranean Community without peace,” EU Institute for Security Studies and European Institute of the Mediterranean, September 2009, available at <http://www.iss.europa.eu/uploads/media/10Papers-01.pdf>; Andrew Rettman, “EU Countries Practice ‘Secret’ Diplomacy, Hamas Says,” *euobserver.com*, September 14, 2009.

⁴⁸ See Transcript of translated remarks (from Hebrew) by Prime Minister Binyamin Netanyahu, Tel Aviv, Israel, June 14, 2009, available at <http://www.pmo.gov.il/PMOEng/Communication/PMSpeaks/speechbarilan140609.htm>.

⁴⁹ For further discussion of this issue, see CRS Report R40092, *Israel and the Palestinians: Prospects for a Two-State Solution*, by Jim Zanotti.

Resolutions passed in 2011 by the House and Senate indicate that some Members of Congress are considering curtailing aid to the Palestinian Authority and possibly other aid to the Palestinians in the event the PLO/PA seeks to circumvent negotiations with Israel through appeals to the United Nations, other international bodies or forums, and/or foreign governments for recognition of statehood or similar diplomatic support.⁵⁰ One possible reason that reluctance to continue funding the PA could follow U.N. action is a possible perception of such action as an attempt to undermine the U.S. role as “honest broker” and guarantor of the peace process, and a sign that U.S. attempts to use aid for political leverage with the Palestinians are unproductive and even futile. Draft legislation for FY2012 appropriations approved by the House Appropriations Subcommittee for State, Foreign Operations and Related Programs in July 2011 would condition any direct assistance to the Palestinian Authority on the Secretary of State’s certification that the PA is “not attempting to establish or seek recognition at the United Nations of a Palestinian state outside of an agreement negotiated between Israel and the Palestinians.”⁵¹

The Gaza Situation

Hamas’s control of Gaza presents a conundrum for many. Most parties, including Israel and the PA, are concerned that assisting Gaza’s population and rebuilding infrastructure damaged during Operation Cast Lead (the 2008-2009 Israel-Hamas conflict) could bolster Hamas. Thus, while controlled levels of humanitarian assistance have been permitted to enter Gaza, reconstruction projects have been very limited.⁵² In June and December 2010, Israel announced plans to ease the closure regime it has enforced at its crossings with Gaza. More goods have come into Gaza as a result, but it is not clear if, when, and under what conditions a full resumption of agricultural and industrial trade and movement of persons between Gaza and the outside world might be expected. In late May 2011, Egypt permanently opened its crossing with Gaza at Rafah to passenger traffic, but because this will not extend to the passage of goods, it might not have a material effect on trade and smuggling patterns. Many observers believe that either Hamas’s positions on the Quartet principles or its control over Gaza would have to change before substantial U.S. funds might be used in the reconstruction of buildings and infrastructure in Gaza, with the exception of U.N. facilities and other special cases such as international schools.⁵³ In the meantime, occasional

⁵⁰ The eighth “resolved” clause in H.Res. 268 “affirms that Palestinian efforts to circumvent direct negotiations and pursue recognition of statehood prior to agreement with Israel will harm United States-Palestinian relations and will have serious implications for the United States assistance programs for the Palestinians and the Palestinians [sic] Authority”. The eighth “resolved” clause in S.Res. 185 reads that the Senate would “consider restrictions on aid to the Palestinian Authority should it persist in efforts to circumvent direct negotiations by turning to the United Nations or other international bodies”.

⁵¹ Draft legislation at subheading “Economic Support Funds,” fifth proviso, available at http://appropriations.house.gov/UploadedFiles/FY12-SFOPS-07-25_xml.pdf.

⁵² A December 2010 *Washington Post* article described the situation in Gaza with respect to issues such as (1) the limited operation of conveyor belts and passage of supply trucks at crossings, (2) concerns about sewage contamination and drinking water shortages, and (3) comparisons between construction materials available through the crossings for internationally-supervised projects and those smuggled into Gaza through tunnels from Egypt for Hamas-led construction projects. Janine Zacharia, “Aid groups decry Israel’s Gaza constraints,” *Washington Post*, December 21, 2010. See, also, e.g., Amnesty International UK, et al., “Dashed Hopes: Continuation of the Gaza Blockade,” November 30, 2010, available at <http://www.oxfam.org/sites/www.oxfam.org/files/dashed-hopes-continuation-gaza-blockade-301110-en.pdf>; Sarah A. Topol, “Gaza Is Not Darfur!”, *Slate.com*, August 5, 2010.

⁵³ See footnote 11. The December 2010 *Washington Post* article said that UNRWA has built 151 housing units out of the 10,000 it hopes to build, and has only received Israeli approval to build six out of the 100 schools UNRWA says are needed to accommodate 40,000 children, while Hamas claims that it has renovated 1,000 houses and built a school with materials smuggled into Gaza through the help of Islamic charities from the Gulf region. Zacharia, op. cit.

skirmishes between Palestinian militants (including Hamas) and Israel along Gaza's borders and continuing low-level rocket and mortar fire from Gaza at targets in Israel could spiral into renewed conflict.

Members of Congress are routinely wary that bilateral assistance for Gaza or contributions to UNRWA could be misused and diverted to benefit Hamas or other terrorist groups. Yet, some Members of Congress advocate expanding the level and type of humanitarian and development assistance to Gaza—often at the same time they advocate easing, ending, or even challenging the Israeli-Egyptian closure regime—because Gazans are seen as needing more support to improve their economic, physical, and psychological situations. In January 2010, 54 Representatives from the 111th Congress signed a letter to President Obama that requested a substantive lifting of the closure regime.⁵⁴

Strengthening the PA in the West Bank

Instability in the West Bank and the Gaza Strip is, paradoxically, both a major reason for the increases in U.S. assistance over the past four years and a factor that could lead some to oppose maintaining or boosting current aid levels. After Hamas's takeover of the Gaza Strip and dismissal from the PA in June 2007, the United States made assisting the PA with economic development and civil security—aimed at bolstering the standing of President Abbas and the Fayyad government—a higher priority. Yet, if the PA in Ramallah proves unable, at a minimum, to achieve and maintain popular legitimacy and competent control in the West Bank, U.S. reluctance to provide resources and training might increase, given concerns that aid could be used against Israel or Palestinian civilians, either by falling into the hands of Hamas or otherwise. Some observers argue that U.S. assistance does not enhance the legitimacy of Abbas and the PA, but rather detracts from it by leading some Palestinians to conclude that the PA is too beholden to the United States.⁵⁵ Others have warned that U.S. dependence on individual leaders such as Abbas and Fayyad works against long-term stability by undermining mechanisms of democratic governance and enabling growing authoritarianism.⁵⁶ The May 2011 Fatah-Hamas power-sharing agreement might also raise concerns that PA leaders may be insufficiently strong or motivated to prevent Hamas from gaining greater influence in the West Bank.

Economic Development and International Donor Assistance

The appointment in June 2007 of Salam Fayyad, a former World Bank and International Monetary Fund official, as PA prime minister raised hopes for Palestinian reform and economic growth that have been realized in part. Fayyad has produced reform proposals aimed at

⁵⁴ Text of Letter to the President, January 20, 2010, available at http://docs.google.com/viewer?url=http%3A%2F%2Fellison.house.gov%2Fimages%2Fstories%2FDocuments%2F2010%2FGaza_letter_to_Obama.pdf.

⁵⁵ See Sherifa Zuhur, Ali Abunimah, Haim Malka, Shibley Telhami, "Symposium: Hamas and the Two-State Solution: Villain, Victim or Missing Ingredient?" *Middle East Policy*, vol. 15, issue 2, July 1, 2008; Transcript of National Public Radio interview ("All Things Considered") with Robert Malley, June 16, 2007, available at <http://www.npr.org/templates/story/story.php?storyId=11135538>.

⁵⁶ See Nathan J. Brown, "Fayyad Is Not the Problem, but Fayyadism Is Not the Solution to Palestine's Political Crisis," Carnegie Endowment for International Peace, September 2010, http://www.carnegieendowment.org/files/fayyad_not_problem_2.pdf.

establishing a “de facto Palestinian state”⁵⁷ that have helped garner major international donor assistance pledges and promises of investment. International pledges of support, however, have routinely proven insufficient to cover the PA’s budgetary expenses, occasionally requiring efforts by Fayyad to obtain last-minute assistance and/or private financing or to temporarily curtail PA employee salaries. The success of Fayyad’s reform plans appears to hinge on the following factors:

- Keeping the public sector solvent enough to sustain long-term private sector development;
- Getting Israeli restrictions loosened or lifted on the movement of goods and people both within and out of the West Bank and Gaza⁵⁸ and on Palestinian development projects in so-called “Area C”,⁵⁹ and
- Overall political progress to overcome Palestinian factional/geographical division and towards Palestinian statehood.⁶⁰

Several high-profile projects—housing developments, industrial parks, superstores, entertainment complexes—have been completed or are in various stages of proposal or construction in and around Ramallah, Bethlehem, Jericho, and the northern West Bank in an effort to jumpstart private sector development.⁶¹ The World Bank reported real GDP growth of 9.3% for the West Bank and Gaza in 2010.⁶² Yet, most analysts assert that actual and prospective economic development should not be overstated because the West Bank economy continues to be propped up by external aid and continues to recover from historic economic lows precipitated by the

⁵⁷ See, e.g., Palestinian National Authority, *Palestine: Ending the Occupation, Establishing the State*, Program of the Thirteenth Government, August 2009, available at http://www.mideastweb.org/palestine_state_program.htm. A key passage from the document reads: “Out of respect for our citizens, and in recognition of their desire to live free and peaceful lives under national independence, we must answer their demand to see the fruits of the state-building project. Against this background, the Palestinian government is struggling determinedly against a hostile occupation regime, employing all of its energies and available resources, most especially the capacities of our people, to complete the process of building institutions of the independent State of Palestine in order to establish a de facto state apparatus within the next two years. It is time now for the illegal occupation to end and for the Palestinian people to enjoy security, safety, freedom and independence.”

⁵⁸ The current system of Israeli restrictions on movement within the West Bank can be traced to the time of the second Palestinian *intifada* (which began in late 2000), and the closure of Gaza crossings and ports following the Hamas takeover in June 2007 has led to a near economic standstill there. The International Crisis Group has referred to a UNDP official’s estimate that it would take five years for Gaza to be restored simply to the unenviable state in which it was immediately before the recent conflict began in December 2008. International Crisis Group, *Gaza’s Unfinished Business*, Middle East Report No. 85, April 23, 2009, available at <http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Israel%20Palestine/85%20Gaza%20Unfinished%20Business.ashx>.

⁵⁹ Zones denoted as “Area C” in the West Bank pursuant to the Israel-PLO Interim Agreement on the West Bank and the Gaza Strip, dated September 28, 1995, fall under Israeli administrative and security control. The agreement is available at <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/THE+ISRAELI-PALESTINIAN+INTERIM+AGREEMENT.htm>.

⁶⁰ See Nathan J. Brown, “Are Palestinians Building a State?”, Carnegie Endowment for International Peace, June 2010, available at http://www.carnegieendowment.org/files/palestinian_state1.pdf.

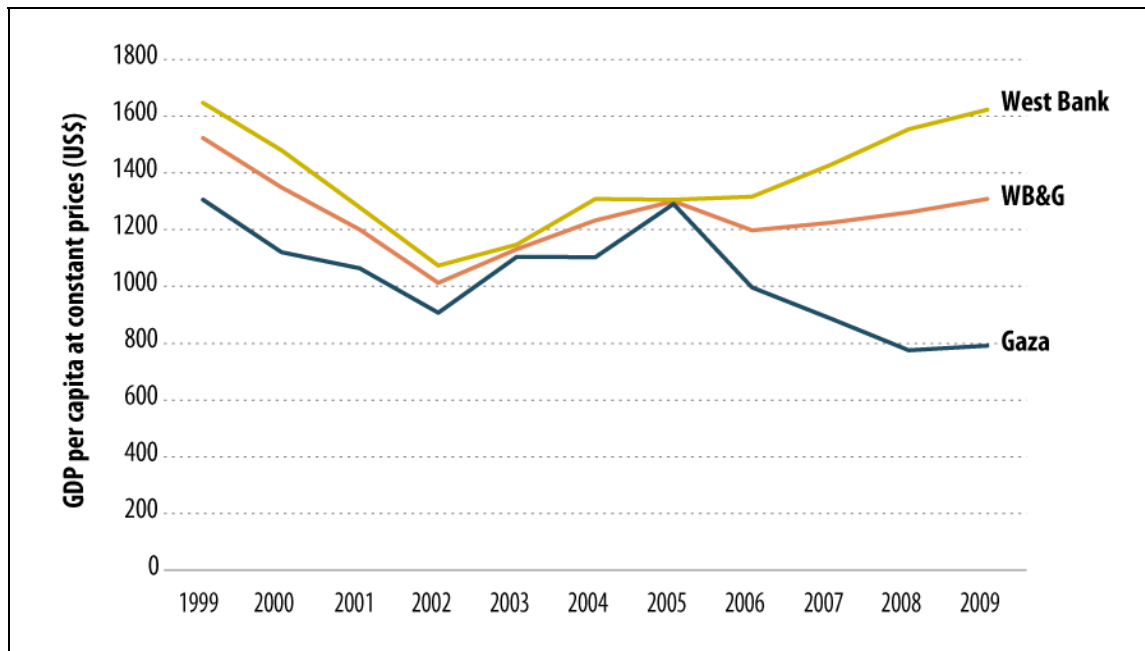
⁶¹ Some of these ventures have been supported by U.S. organizations—including the Overseas Private Investment Corporation (OPIC), the Aspen Institute, the Center for American Progress, and CHF International—affiliated or involved with a public-private partnership known as the Middle East Investment Initiative. See <http://meinitiative.org>.

⁶² The World Bank, Statement at the Ad Hoc Liaison Committee Meeting, Brussels, Belgium, April 13, 2011, available at <http://siteresources.worldbank.org/WESTBANKGAZAEXTN/Resources/AHLCApril2011WorldBankStatement.pdf>.

conflicts of the past decade (see **Figure 1** below). Furthermore, uncertainty remains regarding movement and access and regarding progress in negotiations with Israel.⁶³

Fayyad's future status within the PA government, and possibly the continuing prospects of Western support for the reform and economic development programs described above, have been thrown into limbo pending formation of the new government under the May 2011 Fatah-Hamas power-sharing agreement.

**Figure 1. West Bank and Gaza Strip
Gross Domestic Product (GDP) Per Capita: 1999-2009**



Source: World Bank; Palestinian Central Bureau of Statistics

Congress has indicated its interest in staying abreast of the economic assistance Arab states provide to the West Bank and the PA, sometimes requiring reports from the Administration on the subject.⁶⁴ Arab states (especially Gulf states) provided large amounts of aid to the Hamas-led PA government in 2006-2007 after the United States and European Union withdrew their aid, but following the reinstatement of U.S. and EU aid in mid-2007, most of them reduced contributions.⁶⁵ Routinely, they make generous pledges of aid to the Palestinians, but at times fulfill them only in part and after significant delay. Jacob Walles, Deputy Assistant Secretary of State for Near

⁶³ See The World Bank, op. cit.; Zahi Khouri, "The West Bank's Deceptive Growth," *New York Times*, September 8, 2009.

⁶⁴ See, e.g., H.Rept. 111-366: "The conferees direct the Secretary of State to provide a report to the Committees on Appropriations not later than 180 days after enactment of this Act on international participation, including by Arab states, in the economic development of the West Bank and support for the Palestinian Authority, similar to that proposed by the House. This report may be submitted in classified form, if necessary."

⁶⁵ See Glenn Kessler, "Arab Aid to Palestinians Often Doesn't Fulfill Pledges," *Washington Post*, July 27, 2008; "Falling Short," *Washington Post*, July 27, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/graphic/2008/07/27/GR2008072700095.html?sid=ST2008072700226>.

Eastern Affairs, addressed the progressive decline in Arab contributions in a July 12, 2011, hearing before the House Foreign Affairs Subcommittee on the Middle East and South Asia:

Just to give you some numbers. In 2009, the total amount provided the PA from Arab donors was \$462 million. In 2010, that number was \$287 million. And so far this year in 2011, the Arab states have provided only \$78.5 million....

Arab states' reluctance to fulfill pledges may stem from misgivings over "picking sides" in Palestinian factional disputes and from concerns that without imminent prospects either for domestic political unity or for progress on the peace process, any money contributed could be a waste. On the part of the Gulf states in particular, reluctance may also stem from a feeling that they are less responsible historically for the Palestinians' current situation than Israel, the United States, and Europe.

Conclusion

Implementing U.S. bilateral assistance programs for the West Bank and Gaza and making UNRWA contributions presents significant challenges due both to regional political uncertainty and to concerns that aid might be diverted to Palestinian terrorist groups—particularly as Congress observes how the May 2011 Fatah-Hamas power-sharing agreement might be implemented and how the PLO/PA approaches possible U.N. action on Palestinian statehood in September 2011. Prospects for stability in the West Bank appear to hinge on improved security, political and economic development, Israeli cooperation, and continuation of high levels of foreign assistance.

In assessing whether U.S. aid to the Palestinians since the June 2007 West Bank/Fatah-Gaza Strip/Hamas split has advanced U.S. interests, Congress could evaluate how successful aid has been in

- reducing the threat of terrorism;
- inclining Palestinians towards peace with Israel;
- preparing Palestinians for self-reliance in security, political, and economic matters;
- promoting regional stability; and
- meeting humanitarian needs.

Given that evaluation, Congress will assess future aid in the context of U.S. policy priorities (see "Issues for Congress in Determining Future Aid" and "Introduction: Issues for Congress"). Such evaluation and assessment 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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