

Comparison of HR 4681 (amended) and S. 2370

Prepared by Americans for Peace Now

(Italics indicate language copied directly from the bills)

Issue & Administration Comment	HR 4681 (amended)	S. 2370	Analysis & Comment
<p>DECLARATION OF POLICY</p>	<p><i>a) DECLARATION OF POLICY.—It shall be the policy of the United States—</i></p> <p><i>(1) to support a peaceful, two-state solution to end the conflict between Israel and the Palestinians in accordance with the Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (commonly referred to as the ‘Roadmap’);</i></p> <p><i>(2) to oppose those organizations, individuals, and countries that support terrorism and violence;</i></p> <p><i>(3) to urge members of the international community to avoid contact with and refrain from financially supporting the terrorist organization Hamas or a Hamas-controlled Palestinian Authority until Hamas agrees to recognize Israel, renounce violence, disarm, and accept prior agreements, including the Roadmap; and</i></p> <p><i>(4) to promote the emergence of a democratic Palestinian governing authority that—</i></p> <p><i>(A) denounces and combats terrorism;</i></p> <p><i>(B) has agreed to and is taking action to disarm and dismantle any terrorist agency, network, or facility;</i></p> <p><i>(C) has agreed to work to eliminate anti-Israel and anti-Semitic incitement and the commemoration of terrorists in Palestinian society;</i></p> <p><i>(D) has agreed to respect the sovereignty of its neighbors;</i></p> <p><i>(E) acknowledges, respects, and upholds the human rights of all people;</i></p> <p><i>(F) implements the rule of law, good governance, and democratic practices, including conducting free, fair, and transparent elections in compliance with international standards;</i></p> <p><i>(G) ensures institutional and financial transparency and accountability; and</i></p> <p><i>(H) has agreed to recognize the State of Israel as an independent, sovereign, Jewish, democratic state.</i></p> <p><i>(5) to continue to support assistance to the Palestinian people</i></p>	<p><i>It shall be the policy of the United States –</i></p> <p><i>(1) to support a peaceful, two-state solution to end the conflict between Israel and the Palestinians in accordance with the Performance-Based Roadmap to a Permanent Two State Solution to the Israeli-Palestinian conflict (commonly referred to as the “Roadmap”);</i></p> <p><i>(2) to oppose those organizations, individuals, and countries that support terrorism and violently reject a two-state solution to end the Israeli-Palestinian conflict;</i></p> <p><i>(3) to promote the rule of law, democracy, the cessation of terrorism and incitement, and good governance in institutions and territories controlled by the Palestinian Authority; and</i></p> <p><i>(4) to urge members of the international community to avoid contact with and refrain from financially supporting the terrorist organization Hamas until it agrees to recognize Israel, renounce violence, disarm, and accept prior agreements, including the Roadmap.</i></p>	<p>S. 2370: The Senate includes a relatively straightforward statement of policy, reiterating the U.S. commitment to a two-state solution and the Road Map, and opposition to those who do not share this commitment.</p> <p>HR 4681: While the House International Relations Committee improved this section of HR 4681 somewhat by adding a clause expressing U.S. support for a two-state solution and the Roadmap, overall the House version still takes a much less constructive approach. It does so by including a long list of demands for Palestinian reforms, many of which, while important, are not fundamental benchmarks for U.S. engagement with the Palestinians or in any way related to the success of Hamas in the recent election. In doing so, the House version undermines its own anti-terror message, bolstering the argument that the U.S. is setting Hamas up to fail, rather than seriously and meaningfully challenging Hamas to change.</p> <p>Demands that are not linked to fundamental elements of U.S. policy regarding the quest for peace and red lines for engagement with the Palestinians should be deleted or changed into a Sense of Congress.</p>
<p>AID TO THE PA</p>	<p>Both the House and Senate versions include a broad certification requirement that is the basis for all or most of the sanctions that follow.</p>		

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<p>CERTIFICATION REQUIREMENTS (related to Hamas and the election results)</p>	<p><i>(1) no ministry, agency, or instrumentality of the Palestinian Authority is controlled by a foreign terrorist organization and no member of a foreign terrorist organization serves in a senior policy making position in a ministry, agency, or instrumentality of the Palestinian Authority;</i> <i>(2) the Palestinian Authority has—</i> <i>(A) publicly acknowledged Israel’s right to exist as a Jewish state; and</i> <i>(B) recommitted itself and is adhering to all previous agreements and understandings by the Palestine Liberation Organization and the Palestinian Authority with the Government of the United States, the Government of Israel, and the international community, including agreements and understandings pursuant to the Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (commonly referred to as the ‘Road-map’); and</i></p>	<p><i>(1) no ministry, agency, or instrumentality of the Palestinian Authority is effectively controlled by Hamas, unless Hamas has -</i> <i>(A) publicly acknowledged Israel’s right to exist as a Jewish state; and</i> <i>(B) committed itself and is adhering to all previous agreements and understandings with the United States Government, with the Government of Israel, and with the international community, including agreements and understandings pursuant to the Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict (commonly referred to as the ‘Roadmap’);and</i></p>	<p>S. 2370: The Senate version focuses on Hamas, rather than the PA. The Senate version also uses a benchmark similar to S. Con. Res. 79 (effective control of the PA by a foreign terrorist organization).</p> <p>The original House version would have mandated sanctions if even one low-level ministry employee were found to support an FTO. The HIRC improved this provision slightly, so that sanctions apply so long as a single member of an FTO was serving in a senior position anywhere within the PA.</p> <p>Problematically, both versions demand that Hamas recognize Israel’s “right to exist as a Jewish state” rather than the traditional demand that parties “recognize Israel” or “recognize Israel’s right to exist.” Demanding that Hamas not only recognize Israel but explicitly endorse Israel as a Jewish state represents raising the bar significantly from what was required of the Egypt, Jordan, or the PLO.</p>
<p>CERTIFICATION REQUIREMENTS (unrelated to Hamas and the election results)</p>	<p><i>the Palestinian Authority has taken effective steps and made demonstrable progress toward—</i> <i>(A) completing the process of purging from its security services individuals with ties to terrorism;</i> <i>(B) dismantling all terrorist infrastructure, confiscating unauthorized weapons, arresting and bringing terrorists to justice, destroying unauthorized arms factories, thwarting and pre-empting terrorist attacks, and fully cooperating with Israel’s security services;</i> <i>(C) halting all anti-Israel incitement in Palestinian Authority-controlled electronic and print media and in schools, mosques, and other institutions it controls, and replacing these materials, including textbooks, with materials that promote tolerance, peace, and coexistence with Israel;</i> <i>(D) ensuring democracy, the rule of law, and an independent judiciary, and adopting other reforms such as ensuring transparent and accountable governance; and</i> <i>(E) ensuring the financial transparency and accountability of all government ministries and operations.</i></p>	<p><i>The Palestinian Authority has made demonstrable progress toward—</i> <i>(A) completing the process of purging from its security services individuals with ties to terrorism;</i> <i>(B) dismantling all terrorist infrastructure within its jurisdiction, confiscating unauthorized weapons, arresting and bringing terrorists to justice, destroying unauthorized arms factories, thwarting and preempting terrorist attacks, and fully cooperating with Israel’s security services;</i> <i>(C) halting all anti-American and anti-Israel incitement in Palestinian Authority-controlled electronic and print media and in schools, mosques, and other institutions it controls, and replacing educational material, including textbooks, with materials that promote peace, tolerance, and coexistence with Israel;</i> <i>(D) ensuring democracy, the rule of law, and an independent judiciary, and adopting other reforms such as ensuring transparent and accountable governance; and</i> <i>(E) ensuring the financial transparency and accountability of all government ministries and operations.</i></p>	<p>S. 2370 & HR 4681: Both the House and Senate include (virtually identical) benchmarks that are unrelated to the recent victory of Hamas in the elections. Many of these benchmarks represent reforms that Fatah was not able to achieve in more than a decade in power.</p> <p>Important as these reforms may be, neither the U.S. nor Israel has ever considered them a prerequisite for engaging with the PA. Moreover, the PA – under any leadership – will likely be unable to meet these requirements in the short- or medium term, and outside the context of progress towards a peace agreement.</p> <p>All of these benchmarks should be removed from the bill or transformed into a sense of Congress regarding long-term goals.</p>

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<p>BAN ON DIRECT ASSISTANCE TO THE PALESTINIAN AUTHORITY</p> <p>Administration comment on HR 4681:</p> <p>“...in order to support the bill, we would need added flexibility to provide support for President Abbas and for non-Hamas Palestinian institutions as described below...”</p> <p>“The Administration appreciates the exceptions permitting assistance in certain instances. However, these exceptions, which operate in a manner comparable to a waiver authority with Presidential determinations, require an onerous 30-day preconsultation period. Also, they are not sufficiently broad to capture the unpredictable circumstances that may warrant a waiver of the assistance bans. Therefore, additional flexibility is needed either through exceptions or a general waiver authority, which would permit waiving the ban in the national security interest without a lengthy preconsultation period.</p> <p>“Additional exceptions expected to be needed include those for (i) broader aid for the President and his office to ensure he can fulfill his duties as President, prevent Hamas from taking over the rest of the PA and the PLO, and prevail in any confrontation with Hamas; (ii) other contingencies, e.g., to help the President maintain control of the management and security of border crossings; and, (iii) support to non-Hamas controlled elements of the PA, e.g., the judiciary, municipalities, Palestinian Monetary Authority. Exceptions for democracy and governance activities, activities which Israel may wish us to support, would also be useful.”</p>	<p><i>“(a) Limitation- Except as provided in subsection (e), assistance may be provided under this Act to the Palestinian Authority only during a period for which a certification described in subsection (b) is in effect.</i></p> <p>No national security waiver is provided for this section.</p>	<p><i>“(a) Limitation- Assistance may be provided under this Act to the Palestinian Authority only during a period for which a certification described in subsection (b) is in effect.</i></p> <p>No national security waiver is provided for this section.</p>	<p>Both bills sacrifice national security by unreasonably tying the President’s hands in the conduct of foreign policy. The U.S. should be able to maintain a tough line against terrorists without compromising our own national security.</p> <p>HR 4681: The HIRC improved slightly on the original version by removing the words “or under any other provision of law” from the text. In doing so, the HIRC narrowed the scope of the limitation to funds provided under the ForOps bill, allowing the President, at least in theory, to use funds available under other provisions of law (e.g., emergency contingency funds) for direct aid to the PA. This is consistent with the Senate version.</p> <p>At the same time, however, the HIRC added this Sense of Congress stipulating that the intent of Congress is for the President to view the ban on aid to the PA as applying to all funds available to him, regardless of the provision of law under which they are provided. It is worth noting that the one instance when President Bush circumvented a Congressional restriction on aid to the Palestinians by dipping into a different category of funding, Congress responded by cutting that same source of funding in the subsequent appropriations cycle by exactly the amount he had provided to the Palestinians.</p> <p>Instead of playing games and giving the President a back door through which he can circumvent the limitation, a real national security waiver should be added to the bill.</p>

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<p>EXCEPTIONS TO BAN ON DIRECT ASSISTANCE TO THE PA</p> <p>Administration Comment on HR 4681: “In addition, the Administration finds objectionable: (1) the mandatory nature of the bill’s sanctions on aid to the PA and for the West Bank and Gaza (WB/G) and on related activities absent an unachievable certification; these should be permissive sanctions; (2) the lack of general waiver authority for its key ban on assistance to the PA; we welcome the exceptions from both the PA and WB/G bans; (3) the codifying into permanent law the bans on PA and WB/G aid; these should be time-limited; and, (4) other mandatory sanctions that remain objectionable.”</p>	<p><i>(A) Assistance to Independent Elections Commissions.—Assistance to any Palestinian independent election commission if the President transmits to Congress a certification that contains a determination of the President that—</i></p> <p><i>(i) no member of such commission is a member of, affiliated with, or appointed by a foreign terrorist organization; and</i></p> <p><i>(ii) each member of such commission is independent of the influence of any political party or movement.</i></p> <p><i>(B) Assistance to Support the Middle East Peace Process.—Assistance to the Office of the President of the Palestinian Authority for non-security expenses directly related to facilitating a peaceful resolution of the Israeli-Palestinian conflict or for the personal security detail of the President of the Palestinian Authority if the President transmits to Congress a certification that contains a determination of the President that—</i></p> <p><i>(i) such assistance is critical to facilitating a peaceful resolution of the Israeli-Palestinian conflict;</i></p> <p><i>(ii) the President of the Palestinian Authority is not a member of or affiliated with a foreign terrorist organization and has rejected the use of terrorism to resolve the Israeli-Palestinian conflict; and</i></p> <p><i>(iii) such assistance will not be used to provide funds to any individual who is a member of or affiliated with a foreign terrorist organization or who has not rejected the use of terrorism to resolve the Israeli-Palestinian conflict.</i></p> <p><i>(iv) such assistance will not be transferred to any other entity within or outside of the Palestinian Authority except as payment for legal goods or services rendered</i></p> <p><i>(2) Additional Requirements.—Assistance described paragraph (1) may be provided only if the President— “(A) determines that the provision of such assistance is important to the national security interests of the United States; and</i></p> <p><i>(B) not less than 30 days prior to the obligation of amounts for the provision of such assistance—</i></p> <p><i>(i) consults with the appropriate congressional committees regarding the specific programs, projects, and activities to be carried out using such assistance; and</i></p> <p><i>(ii) submits to the appropriate congressional committees a written memorandum that contains the determination of the President under subparagraph (A).</i></p>	<p><i>(e) National Security Waiver-</i></p> <p><i>(1) WAIVER- The President may waive the limitation in subsection (a) with respect to the administrative and personal security costs of the Office of President of the Palestinian Authority and for activities of the President of the Palestinian Authority to promote democracy and the rule of law if the President certifies and reports to the appropriate congressional committees that--</i></p> <p><i>(A) it is in the national security interests of the United States to provide such assistance; and</i></p> <p><i>(B) the President of the Palestinian Authority and the President's party are not affiliated with Hamas or any other foreign terrorist organization.</i></p> <p><i>(2) CONSULTATION REQUIRED- The President shall consult with the appropriate congressional committees prior to making a certification under paragraph (1).</i></p>	<p>S. 2370: The “waiver” in the Senate version is in fact an exception, allowing the U.S. to support and work with PA President Mahmoud Abbas. This is in principle a welcome exception. However, the second condition of the section, probably intended to block aid if Fatah joins a Hamas government, could be interpreted much more broadly to bar any aid the President if he has any contact with a Hamas-dominated cabinet.</p> <p>HR 4681: The HIRC removed a key phrase from the limitation on U.S. assistance to the PA: "under any other provision of law." In doing so, it narrowed the scope of the limitation to funds provided under the ForOps bill, allowing the President, at least in theory, to use funds available under other provisions of law (e.g., emergency contingency funds) for direct aid to the PA. The amended version includes limited exceptions to the ban on direct aid, to include assistance for "independent elections commissions" and assistance "to support the Middle East Peace Process."</p> <p>However, both versions fail to provide the President with a national security waiver of the limitation. Such a waiver is a standard component of virtually all sanctions legislation, since U.S. national security should never be made secondary to any other policy goal. Also, in both versions, for each exception the President must meet additional certification requirements that are far-reaching and potentially impossible to fulfill.</p> <p>A real national security waiver should be added, as well as meaningful exceptions to allow U.S. aid to flow, with appropriate oversight, to support key U.S. interests and priorities.</p>
<p>SUNSET CLAUSE</p>	<p>Both versions omit a key element of effective sanctions legislations: a sunset clause. A sunset clause would provide a clear political horizon of Palestinians who seek a two-state solution with Israel, and would permit the U.S. to meet positive new developments on the Palestinian front with an effective and constructive policy response.</p>		
<p>DEFINITIONS SPECIFIC TO THIS BILL</p> <p>Administration Comment on HR 4681:</p> <p>“The Administration also requests that the ban be re-crafted to more suitably apply to only Hamas-controlled elements of the PA, not as it currently does to all members of the Palestinian Legislative Council (PLC) including those that are not part of Hamas, the President, and agencies and independent instrumentalities that are not controlled by Hamas but may be viewed as part of the PA.”</p>	<p><i>The term ‘Palestinian Authority’ means the interim Palestinian administrative organization that governs part of the West Bank and all of the Gaza Strip (or any successor Palestinian governing entity), including the Palestinian Legislative Council.</i></p>	<p>By defining the PA as including the PLC, both bills inexplicably (and deliberately) extend sanctions to all elected members of the PLC, including those who are not members of Hamas or any foreign terrorist organization.</p> <p>This should be changed.</p>	
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Comment			
<p>“SEC. 620L. LIMITATION ON ASSISTANCE FOR THE WEST BANK AND GAZA”</p> <p>Administration Comment on HR 4681:</p> <p>“...The Administration is concerned with the 25 day consultation period before the waiver takes effect. Also, the exception for ‘basic human health needs’ is too narrow and should be broadened to ‘basic human needs,’ in order for the exception to cover essential aid and services for the Palestinian people, not just those limited to health.”</p>	<p><i>(a) LIMITATION.—Except as provided in subsection (d), assistance may be provided under this Act to nongovernmental organizations for the West Bank and Gaza only during a period for which a certification described in section 620K(b) of this Act is in effect with respect to the Palestinian Authority.</i></p> <p><i>(d) EXCEPTIONS.—Subsection (a) shall not apply with respect to the following:</i></p> <p><i>(1) ASSISTANCE TO MEET BASIC HUMAN HEALTH NEEDS.—The provision of food, water, medicine, sanitation services, or other assistance to meet basic human health needs.</i></p> <p><i>(2) OTHER TYPES OF ASSISTANCE.—The provision of any other type of assistance if the President—</i></p> <p><i>(A) determines that the provision of such assistance will further the national security interests of the United States; and</i></p> <p><i>(B) not less than 25 days prior to the obligation of amounts for the provision of such assistance—</i></p> <p><i>(i) consults with the appropriate congressional committees regarding the specific programs, projects, and activities to be carried out using such assistance; and</i></p> <p><i>(ii) submits to the appropriate congressional committees a written memorandum that contains the determination of the President under subparagraph (A) and an explanation of how failure to provide the proposed assistance would be inconsistent with furthering the national security interests of the United States.</i></p>	<p><i>(a) Limitation- Assistance may be provided under this Act to nongovernmental organizations for the West Bank and Gaza only during a period for which a certification described in section 620K(b) is in effect with respect to the Palestinian Authority.</i></p> <p><i>(b) Exceptions- Subsection (a) shall not apply with respect to the following:</i></p> <p><i>(1) ASSISTANCE TO MEET BASIC HUMAN NEEDS- Assistance to meet food, water, medicine, or sanitation needs, or other assistance to meet basic human needs.</i></p> <p><i>(2) ASSISTANCE TO PROMOTE DEMOCRACY- Assistance to promote democracy, human rights, freedom of the press, non-violence, reconciliation, and peaceful co-existence, provided that such assistance does not directly benefit Hamas or other foreign terrorist organizations.</i></p> <p><i>(3) OTHER TYPES OF ASSISTANCE- Any other type of assistance if the President--</i></p> <p><i>(A) determines that the provision of such assistance will further the national security interests of the United States; and</i></p> <p><i>(B) not less than 45 days prior to the obligation of amounts for the provision of such assistance-</i></p> <p><i>(i) consults with the appropriate congressional committees regarding the specific programs, projects, and activities to be carried out using such assistance; and</i></p> <p><i>(ii) submits to the appropriate congressional committees a written memorandum that contains the determination of the President under subparagraph (A).</i></p>	<p>Both bills ban aid in general for the West Bank and Gaza, but provide an exception for limited humanitarian aid.</p> <p>S. 2370: The Senate includes a broad exemption to include aid for “basic human needs” as well as additional exceptions to permit aid for democracy and civil society programs.</p> <p>HR 4681: Even the amended version of HR 4681 provides only very limited exceptions to the ban on aid for the West Bank and Gaza, allowing assistance to meet “basic human health needs” and requiring the President to certify not only that the provision of such aid will further the national security interests of the U.S., but also an explanation of "how failure to provide the proposed assistance would be inconsistent with furthering the national security interests of the United States."</p> <p>The HIRC did improve this section of HR 4681 somewhat by shortening the required advance notification period for assistance from 45 days to a more realistic 25 days. The HIRC also removed language that would have extended the ban to funds available under any other provision of law, allowing the President, at least in theory, to use funds available under other provisions of law (e.g., emergency contingency funds) for aid to the West Bank and Gaza (consistent with the Senate version). At the same time, the HIRC added a Sense of Congress making it clear that the intent of Congress is for the President to view the ban on aid to the PA as applying to all funds available to him, regardless of the provision of law under which they are provided.</p> <p>However, neither bill provides a general waiver that would permit the President to provide anything but very limited aid even under emergency circumstances or in the case of a change in the political situation. Such a waiver should be added, with appropriate oversight required.</p>
<p>OTHER REQUIREMENTS</p>	<p>Both bills stipulate extensive auditing, vetting, and marking requirements for aid for the West Bank and Gaza</p>		

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UN REFORM	<p>SEC. 4. UNITED NATIONS AGENCIES AND PROGRAMS.</p> <p>(a) <i>Review and Report</i>—</p> <p>(1) <i>IN GENERAL.</i>—Not later than 60 days after the date of the enactment of this Act, the President shall—</p> <p>(A) conduct an audit of the functions of the entities specified in paragraph (2); and</p> <p>(B) transmit to the appropriate congressional committees a report containing recommendations for the elimination of such entities and efforts that are duplicative or fail to ensure balance in the approach of the United Nations to Israeli-Palestinian issues.</p> <p>(2) <i>ENTITIES SPECIFIED.</i>—The entities referred to in paragraph (1) are the following:</p> <p>(A) The United Nations Division for Palestinian Rights.</p> <p>(B) The Committee on the Exercise of the Inalienable Rights of the Palestinian People.</p> <p>(C) The United Nations Special Coordinator for the Middle East Peace Process and Personal Representative to the Palestine Liberation Organization and the Palestinian Authority.</p> <p>(D) The NGO Network on the Question of Palestine.</p> <p>(E) The Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories.</p> <p>(F) Any other entity the Secretary determines results in duplicative efforts or funding or fails to ensure balance in the approach to Israeli-Palestinian issues.</p> <p>(b) <i>Implementation of Recommendations by Permanent Representative.</i>—</p> <p>(1) <i>IN GENERAL.</i>—The United States Permanent Representative to the United Nations shall use the voice, vote, and influence of the United States at the United Nations to seek the implementation of the recommendations contained in the report required under subsection (a)(1)(B).</p> <p>(2) <i>WITHHOLDING OF FUNDS.</i>—Until such recommendations have been implemented, the Secretary of State is authorized to withhold from United States contributions to the regular assessed budget of the United Nations for a biennial period amounts that are proportional to the percentage of such budget that are expended for such entities.</p> <p>(c) <i>GAO AUDIT.</i>—The Comptroller General shall conduct an audit of the status of the implementation of the recommendations contained in the report required under subsection (a)(1)(B).</p>	The Senate bill includes no UN reform language.	<p>The Senate bill wisely omits this provision, which is entirely unrelated to Hamas or the elections.</p> <p>Given the likelihood of a dramatic cut in funding to the PA, Congress should not be taking steps that could undermine the UN’s leverage in the West Bank and Gaza. It would seem counter-productive to mandate reforms that could undermine, for example, the UN Relief and Works Agency (UNRWA) – a body which provides humanitarian assistance to large numbers of the neediest Palestinians in the West Bank and Gaza.</p> <p>Including this provision in this bill risks undermining the message to Hamas and the Palestinian people about violence and terror, and leaving the impression that the real goal is to punish all Palestinians in every possible forum.</p>
“DESIGNATION OF TERRITORY CONTROLLED BY THE PALESTINIAN AUTHORITY AS TERRORIST SANCTUARY.”	<p>SEC. 5. <i>It is the sense of Congress that, during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority, the territory controlled by the Palestinian Authority should be deemed to be in use as a sanctuary for terrorists or terrorist organizations for purposes of section 6(j)(5) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(5)) and section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f).</i></p>	<p>SEC. 4. <i>It is the sense of Congress that, during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority, the territory controlled by the Palestinian Authority should be deemed to be in use as a sanctuary for terrorists or terrorist organizations for purposes of section 6(j)(5) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(5)) and section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f).</i></p>	<p>Both bills include this non-binding Sense of Congress which sends the message that Congress is targeting not only the PA but the entire Palestinian economy and private sector (since, if the language were viewed as binding by the Administration, it would require, among other things, an export license for any U.S. goods exported to the West Bank and Gaza except for medicine, medical supplies, and certain food exports.) It also sends a chilling signal to private sector investors and the financial services industry.</p> <p>This section should be deleted.</p>

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<p>“DENIAL OF VISAS FOR OFFICIALS OF THE PALESTINIAN AUTHORITY.”</p> <p>Administration Comment on HR 4681:</p> <p>“...The ban, however, remains overbroad in that it applies equally to PA reps that are not affiliated with Hamas, as well as those that are. It does not have exceptions for the office of President Abbas; imposes a burdensome procedure for overcoming the ban in order to issue a waiver that is not consistent with existing, ample authorities under the Immigration and Nationality Act; and presents operational challenges (e.g., existing visas).</p>	<p><i>SEC. 6. (a) IN GENERAL.—A visa shall not be issued to any alien who is an official of, affiliated with, or serving as a representative of the Palestinian Authority during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.</i></p> <p><i>(b) WAIVER.—Subsection (a) shall not apply—</i></p> <p><i>(1) if the President determines and certifies to the appropriate congressional committees, on a case-by-case basis, that the issuance of a visa to an alien described in such subsection is important to the national security interests of the United States; or</i></p> <p><i>(2) with respect to visas issued in connection with United States obligations under the Act of August 4, 1947 (61 Stat. 756) (commonly known as the “United Nations Headquarters Agreement Act”).</i></p>	<p><i>SEC. 5. A visa should not be issued to any alien who is an official of, affiliated with, or serving as a representative of the Palestinian Authority, other than the President of the Palestinian Authority and his or her personal representatives, provided that the President and his or her personal representatives are not affiliated with Hamas or any other foreign terrorist organization, during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.</i></p>	<p>Members of Hamas and other foreign terrorist organizations are already barred by U. S. law from obtaining visas. This provision thus only impacts Palestinians who are NOT affiliated with foreign terrorist organizations.</p> <p>S. 2370: The Senate version makes the ban on visas discretionary, rather than mandatory – a positive change.</p> <p>HR 4681: The House provides the President the authority to waive the ban on a limited, case-by-case basis for national security reasons.</p> <p>Mandatory or discretionary, this provision punishes the wrong people and should be deleted.</p>
<p>“TRAVEL RESTRICTIONS ON OFFICIALS AND REPRESENTATIVES OF THE PALESTINIAN AUTHORITY AND THE PALESTINE LIBERATION ORGANIZATION STATIONED AT THE UNITED NATIONS IN NEW YORK CITY.”</p>	<p><i>SEC. 7. The President shall restrict the travel of officials and representatives of the Palestinian Authority and of the Palestine Liberation Organization who are stationed at the United Nations in New York City to a 25-mile radius of the United Nations headquarters building during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.</i></p>	<p><i>SEC. 6.(a) In General- Notwithstanding any other provision of law, and except as provided in subsection (b), the President should restrict the travel of officials and representatives of the Palestinian Authority and of the Palestine Liberation Organization, who are stationed at the United Nations in New York City to a 25-mile radius of the United Nations headquarters building during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.</i></p> <p><i>(b) Exception- The travel restrictions described in subsection (a) should not apply to the President of the Palestinian Authority and his or her personal representatives, provided that the President and his or her personal representatives are not affiliated with Hamas or any other foreign terrorist organization.</i></p>	<p>Under the terms of agreements signed with Israel, the PA does not maintain international diplomatic relations. The PA thus is not represented at the UN – only the PLO is. This provision would thus have no impact on Hamas and only impact the PLO, which is not a foreign terrorist organization, recognizes Israel, and of which Hamas is not a member.</p> <p>S. 2370: The Senate version makes the travel restriction discretionary, rather than mandatory.</p> <p>HR 4681: The HIRC amended HR 4681 to remove the words phrase "notwithstanding any other provision of law," leaving some potential room for maneuver by the President via some other provision of law that is more consistent with U.S. interests.</p> <p>Mandatory or discretionary, this provision punishes the wrong people and should be deleted, or revised to delete the reference to the PLO.</p>

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<p>“PROHIBITION ON PALESTINIAN AUTHORITY REPRESENTATION IN THE UNITED STATES.”</p>	<p>SEC. 8. (a) PROHIBITION.—Notwithstanding any other provision of law, it shall be unlawful to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by, the Palestinian Authority or the Palestine Liberation Organization during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.</p> <p>(b) Enforcement-</p> <p>(1) ATTORNEY GENERAL- The Attorney General shall take the necessary steps and institute the necessary legal action to effectuate the policies and provisions of subsection (a), including steps necessary to apply the policies and provisions of subsection (a) to the Permanent Observer Mission of Palestine to the United Nations.</p> <p>(2) RELIEF- Any district court of the United States for a district in which a violation of subsection (a) occurs shall have authority, upon petition of relief by the Attorney General, to grant injunctive and such other equitable relief as it shall deem necessary to enforce the provisions of subsection (a).</p> <p>(c) WAIVER.—</p> <p>(1) AUTHORITY.—The President may waive the application of subsection (a) for a period of 180 days if the President determines and certifies to the appropriate congressional committees that such waiver is vital to the national security interests of the United States and provides an explanation of how failure to waive the application of subsection (a) would be inconsistent with vital national security interests of the United States.</p> <p>(2) RENEWAL.—The President may renew the waiver described in paragraph (1) for successive 180 day periods if the President makes the determination and certification described in such paragraph for each such period.</p>		<p>SEC. 7. (a) Prohibition- Notwithstanding any other provision of law, it shall be unlawful to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by, the Palestinian Authority during any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.</p> <p>(b) Enforcement-</p> <p>(1) ATTORNEY GENERAL- The Attorney General shall take the necessary steps and institute the necessary legal action to effectuate the policies and provisions of subsection (a).</p> <p>(2) RELIEF- Any district court of the United States for a district in which a violation of subsection (a) occurs shall have authority, upon petition of relief by the Attorney General, to grant injunctive and such other equitable relief as it shall deem necessary to enforce the provisions of subsection (a).</p> <p>(c) Waiver- Subsection (a) shall not apply if the President determines and certifies to the appropriate congressional committees that the establishment or maintenance of an office, headquarters, premises, or other facilities is vital to the national security interests of the United States.</p>	<p>Under the terms of agreements signed with Israel, the PA does not maintain international diplomatic relations, including with the U.S., so the PA does not maintain a representative office in the U.S. – only the PLO does.</p> <p>S. 2370: The Senate version wisely focuses on the PA only.</p> <p>HR 4681: The House version once again attacks the wrong target, imposing sanctions on both the PA and the PLO. In addition, an amendment adopted in the House Judiciary Committee (offered by Rep. Weiner, D-NY), expanded the sanctions to include the PLO mission to the UN – an expansion of the sanctions that directly conflicts with the spirit of the two previous provisions (both of which deal specifically with the PLO presence at the UN). In addition, this section conflicts with U.S. legal obligations as host of the UN headquarters.</p> <p>Both versions permit the President to waive the prohibition if he determines it is vital to U.S. national interests to do so.</p> <p>With or without a waiver, this provision targets the wrong people and should be deleted.</p>
<p>“INTERNATIONAL FINANCIAL INSTITUTIONS.”</p> <p>Administration Comment on HR 4681: “The Administration objects to a mandatory policy that prescribes how the US votes in the international financial institutions. Besides raising constitutional concerns... such mandates limit the flexibility of the Administration to advance important US economic policy positions. The U.S. can be more effective in the IFIs when its position on policies and projects is not predetermined by legislative mandates. The U.S. loses its leverage to improve outcomes if it is perceived to be operating under inflexible legislative mandates.”</p>	<p>SEC. 9. (a) UNITED STATES POLICY.—It shall be the policy of the United States that the United States Executive Director at each international financial institution shall use the voice, vote, and influence of the United States to prohibit assistance to the Palestinian Authority during any period for which a certification described in section 620K(b) of the Foreign Assistance of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.</p>	<p>SEC. 8. (a) Requirement- The President should direct the United States Executive Director at each international financial institution to use the voice, vote, and influence of the United States to prohibit assistance to the Palestinian Authority (other than assistance described under subsection (b)) during any period for which a certification described in section 620K(b) of the Foreign Assistance of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority.</p> <p>(b) Exceptions- The prohibition on assistance described in subsection (a) should not apply with respect to the following types of assistance:</p> <p>(1) Assistance to meet food, water, medicine, or sanitation needs, or other assistance to meet basic human needs.</p> <p>(2) Assistance to promote democracy, human rights, freedom of the press, non-violence, reconciliation, and peaceful co-existence, provided that such assistance does not directly benefit Hamas or other foreign terrorist organizations.</p> <p>(c) Definition- In this section, the term ‘international financial institution’ has the meaning given the term in section 1701(c)(2) of the International Financial Institutions Act (22 U.S.C. 262r(c)(2)).</p>	<p>S. 2370: The Senate makes the U.S. efforts to block aid to the PA discretionary, rather than mandatory. The Senate also adds the exceptions to permit aid that is consistent with priorities mentioned elsewhere in the bill (humanitarian needs and civil society programs) – also a constructive change.</p> <p>HR 4681: The HIRC amended HR 4681 to give the President some flexibility (going from "the President shall direct" to "it shall be the policy of the U.S. to..."). However, the provision does not include any exceptions, including exceptions consistent with those stipulated in the section on U.S. aid to the PA and the West Bank/Gaza (i.e., basic human needs, elections, peace process)</p> <p>Exceptions should be included to support aid from international financial institutions to support key U.S. interests, like basic human needs and democracy promotion.</p>	

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<p>“DIPLOMATIC CONTACTS WITH PALESTINIAN TERROR ORGANIZATIONS.”</p>	<p><i>SEC. 10. It shall be the policy of the United States that no officer or employee of the United States Government shall negotiate or have substantive contacts with members or official representatives of Hamas, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, al-Aqsa Martyrs Brigade, or any other Palestinian terrorist organization, unless and until such organization—</i></p> <p><i>(1) recognizes Israel’s right to exist;</i></p> <p><i>(2) renounces the use of terrorism;</i></p> <p><i>(3) dismantles the infrastructure necessary to carry out terrorist acts, including the disarming of militias and the elimination of all instruments of terror; and</i></p> <p><i>(4) recognizes and accepts all previous agreements and understandings between the State of Israel and the Palestine Liberation Organization and the Palestinian Authority.</i></p>	<p><i>SEC. 9. No funds authorized or available to the Department of State may be used for or by any officer or employee of the United States Government to negotiate with members or official representatives of Hamas, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, al-Aqsa Martyrs Brigade, or any other Palestinian terrorist organization (except in emergency or humanitarian situations), unless and until such organization--</i></p> <p><i>(1) recognizes Israel's right to exist;</i></p> <p><i>(2) renounces the use of terrorism;</i></p> <p><i>(3) dismantles the infrastructure in areas within its jurisdiction necessary to carry out terrorist acts, including the disarming of militias and the elimination of all instruments of terror; and</i></p> <p><i>(4) recognizes and accepts all previous agreements and understandings between the State of Israel and the Palestinian Authority.</i></p>	<p>S. 2370: The Senate version focuses correctly on U.S. official contacts, rather than seeking to bar U.S. intelligence activities. The Senate also includes an exception for emergencies or humanitarian situations – a constructive approach.</p> <p>HR 4681: The HIRC amended the original version of HR 4681 to transform what would have been a binding ban on all U.S. government contacts (made effective by linking it to the use of U.S. funds, over which Congress has control), to a declaration of policy, which in legal terms is advisory but not binding (and is not linked to the use of U.S. funds).</p> <p>Binding or non-binding, this section is unnecessary given that under existing U.S. policy U.S. officials do not have any contact with members of Foreign Terrorist Organizations.</p>
<p>“REPORTING REQUIREMENT”</p>	<p>none</p>	<p><i>SEC. 10. REPORTING REQUIREMENT.</i></p> <p><i>Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall submit to the appropriate congressional committees a report that--</i></p> <p><i>(1) describes the steps that have been taken by the United States Government to ensure that other countries and international organizations, including multilateral development banks, do not provide direct assistance to the Palestinian Authority for any period for which a certification described in section 620K(b) of the Foreign Assistance Act of 1961 (as added by section 2(b)(2) of this Act) is not in effect with respect to the Palestinian Authority; and</i></p> <p><i>(2) identifies any countries and international organizations, including multilateral development banks, that are providing direct assistance to the Palestinian Authority during such a period, and describes the nature and amount of such assistance.</i></p>	<p>The House does not include this reporting requirement.</p>