

Comparison of HR 4681 and S. 2370

Prepared by Americans for Peace Now

Hamas is a terrorist organization, responsible for killing, maiming, and traumatizing countless innocent Israelis, as well as many Americans. The rhetoric of Hamas officials and the charter of their organization include virulent anti-Semitism and calls for the destruction of Israel. So long as Hamas is in power and has not renounced terror and recognized Israel, it is appropriate for the U.S. to refuse to give aid to the Palestinian Authority (PA), and it is appropriate for the U.S. to exercise increased oversight over U.S. humanitarian assistance to the Palestinian people.

In the wake of the Hamas victory in the Palestinian elections, new Palestinian sanctions legislation has been introduced in both the House and Senate – H.R. 4681 and S. 2370. The bills are similar in structure but different in many important details. Both raise serious questions about the goals, strategies, and priorities of the legislation, as detailed below

(Italics indicate language copied directly from the bills; otherwise provisions have been summarized).

Issue	HR 4681	S. 2370	Comment
<p>Declaration of Policy</p>	<p><i>It shall be the policy of the United States to promote the emergence of a democratic Palestinian governing authority that—</i></p> <p><i>(1) denounces and combats terrorism;</i></p> <p><i>(2) has agreed to and is taking action to disarm and dismantle any terrorist agency, network, or facility;</i></p> <p><i>(3) has agreed to work to eliminate anti-Israel and anti-Semitic incitement and the commemoration of terrorists in Palestinian society;</i></p> <p><i>(4) has agreed to respect the boundaries and sovereignty of its neighbors;</i></p> <p><i>(5) acknowledges, respects, and upholds the human rights of all people;</i></p> <p><i>(6) conducts free, fair, and transparent elections in compliance with international standards;</i></p> <p><i>(7) ensures institutional and financial transparency and accountability; and</i></p> <p><i>(8) has agreed to recognize the State of Israel as an independent, sovereign, Jewish, democratic state.</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>In setting out U.S. policy, the House version lists important U.S. requirements and demands of the Palestinians, but fails to mention any political horizon for the Palestinians, omitting mention of U.S. support for peace efforts, the Road Map, or the even the eventual establishment of a Palestinian state.</p> <p>The Senate version takes an approach that is more constructive by including language about the U.S. commitment to peace and the Road Map. It also focuses much more clearly on the issues that are ostensibly the subject of this bill – Hamas and fighting terror – laying out clear “red lines” and priorities of U.S. policy related to fighting terror and promoting good Palestinian governance.</p>

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Certification Requirements	Both the House and Senate versions open with a broad certification requirement that is the basis for all or most of the sanctions that follow.		
Certification requirements (related to Hamas and the election results)	<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 ministry, agency, or instrumentality of the Palestinian Authority;</i></p> <p><i>(2) the Palestinian Authority has—</i></p> <p><i>(A) publicly acknowledged Israel's right to exist as a Jewish state; and</i></p> <p><i>(B) recommitted itself and is adhering to all previous agreements and understandings 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 Roadmap')</i></p>	<p><i>(1) no ministry, agency, or instrumentality of the Palestinian Authority is effectively controlled by Hamas, unless Hamas has -</i></p> <p><i>(A) publicly acknowledged Israel's right to exist as a Jewish state; and</i></p> <p><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');</i></p>	<p>The Senate version correctly focuses on Hamas, rather than the PA.</p> <p>The Senate version also uses a benchmark similar to S. Con. Res. 79, versus the House version, which would invoke sanctions if even one low-level ministry employee were found to support an FTO.</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>
Certification requirements (unrelated to Hamas and the election results)	<p><i>The Palestinian Authority has taken effective steps and made demonstrable progress toward—</i></p> <p><i>(A) completing the process of purging from its security services individuals with ties to terrorism;</i></p> <p><i>(B) dismantling all terrorist infrastructure, 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></p> <p><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></p> <p><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></p> <p><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></p> <p><i>(A) completing the process of purging from its security services individuals with ties to terrorism;</i></p> <p><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></p> <p><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></p> <p><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></p> <p><i>(E) ensuring the financial transparency and accountability of all government ministries and operations.</i></p>	<p>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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Definitions specific to this bill	<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>	<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>	By defining the PA as including the PLC, both bills inexplicably (and deliberately) extend sanctions to not only Hamas members but to all elected members of the PLC, including those who oppose violence, recognize Israel, and support a two-state solution. This should be changed.
General	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.		
Ban on direct assistance to the Palestinian Authority	If the certification is not in effect, there may be no direct assistance to the Palestinian Authority. No waiver is provided for this section.	If the certification is not in effect, there may be no direct assistance to the Palestinian Authority. A section entitled "National Security Waiver" allows the President to provide aid to the President of the PA for administrative and personal security costs and for activities "to promote democracy and the rule of law." This waiver may only be used if the President certifies that doing so is in the national security interests of the U.S., and that the President of the PA and his party are not affiliated with Hamas or any other foreign terrorist organization.	A real national security waiver would state simply that "the President may waive the specified sanction if he determines that it is vital to the national security interests of the U.S.," subject to no other conditions or limitations. Such a waiver should be added to this section. 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.
Limitation on Aid to the West Bank and Gaza	If the certification is not in effect, the bill bars aid for the West Bank and Gaza except in excepted categories: - assistance to meet basic human health needs (specified as provision of food, water, medicine, sanitation services, or other assistance to meet basic human health needs). - other assistance, but only if it is in the national security interests of the U.S. and subject to consultation with Congress and a 45 day pre-notification period. Any aid provided is subject to extensive notification, oversight, vetting, and audit requirements No general waiver is provided for this section.	If the certification is not in effect, the bill bars aid for the West Bank and Gaza except for: - assistance to meet basic human health needs (specified as food, water, medicine, sanitation, or other assistance to meet basic human health needs). - assistance to promote democracy, human rights, freedom of the press, non-violence, reconciliation, and peaceful co-existence, provided that the aid does not directly benefit Hamas or any other foreign terrorist organization. - other assistance, but only if it is in the national security interests of the U.S. and subject to consultation with Congress and a 45 day pre-notification period. Any aid provided is subject to extensive notification, oversight, vetting, and audit requirements No general waiver is provided for this section.	Both bills ban aid in general for the West Bank and Gaza, but provide an exception for very limited humanitarian aid. The Senate adds a very important exception, in addition to humanitarian aid, to permit aid for democracy and civil society programs (taking such aid programs out of the "other assistance" category, where they would be subjected to arduous pre-notification requirements). 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.

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UN Reform	<p>The bill would require a review by the Secretary of State of specified UN entities related to the Palestinians, followed by a report to Congress recommending their elimination.</p> <p>The bill would require mandatory withholding of a portion of U.S. contributions to the UN until the recommended reforms are undertaken.</p> <p>If the certification is not in effect, it would also require mandatory withholding of a portion of U.S. contributions to the UN equal to the proportional amount of the UN budget providing aid to the PA.</p> <p>No waiver is provided for any of this section.</p>	<p>The Senate bill includes no UN reform language.</p>	<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>
Terrorist Sanctuary	<p>Sense of Congress that unless the certification is in place, territory controlled by the PA should be considered a terrorist sanctuary.</p>	<p>Sense of Congress that unless the certification is in place, territory controlled by the PA should be considered a terrorist sanctuary.</p>	<p>Both versions include this non-binding Sense of Congress. 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.</p>
Extraneous provisions	<p>Both versions include numerous extraneous provisions that would have no impact on Hamas and instead, perversely, would undermine Palestinian moderates and make it harder for the U.S. to talk to those Palestinians who reject violence, recognize Israel, and support a two-state solution.</p>		
Visas for Palestinian Officials	<p>If the certification is not in effect, officials of the PA <i>shall</i> be barred from getting visas (would apply to all members of the PLC, based on definition, above).</p> <p>The bill permits the President to waive this ban on a case-by-case basis, based on national security interests.</p>	<p>If the certification is not in effect, officials of the PA <i>should</i> be barred from getting visas.</p> <p>The provision would make the ban discretionary rather than mandatory (using “should,” rather than “shall,” so a waiver is not necessary.</p> <p>The provision explicitly exempts the PA President and his representatives from the ban, so long as they are not affiliated with a foreign terrorist organization.</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>The Senate version makes the ban on visas discretionary, rather than mandatory – a positive change. However, mandatory or discretionary, this provision punishes the wrong people and should be deleted.</p>

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<p>Palestinian UN Representatives</p>	<p>If the certification is not in effect, PA and PLO representatives at the UN <i>shall</i> be required to stay within a 25 mile radius of UN headquarters.</p> <p>No waiver is provided.</p>	<p>If the certification is not in effect, PA and PLO representatives at the UN <i>should</i> be required to stay within a 25 mile radius of UN headquarters.</p> <p>The provision would make the ban discretionary rather than mandatory (using “should,” rather than “shall,”) so a waiver is not necessary.</p> <p>The provision explicitly exempts the PA President and his representatives from the ban, so long as they are not affiliated with a foreign terrorist organization.</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 only impact the PLO, which is not a foreign terrorist organization, recognizes Israel, and of which Hamas is not a member.</p> <p>The Senate version makes the travel restriction discretionary, rather than mandatory – a positive change. However, mandatory or discretionary, this provision punishes the wrong people and should be deleted.</p>
<p>Palestinian Representation in the U.S.</p>	<p>If the certification is not in effect, neither the PA nor the PLO may maintain or finance any representative presence in the U.S.</p> <p>No waiver is provided.</p>	<p>If the certification is not in effect, the PA may not maintain or finance any representative presence in the U.S.</p> <p>The provision includes language permitting the President to waive this ban if he determines that doing so is vital to the national security interests of the U.S.</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. The waiver included by the Senate is not relevant to the PLO office. However, it might have relevance for any paid consultants or lobbyists employed by the PA.</p> <p>While it is positive that the Senate removed the reference to the PLO and included a waiver, this provision punishes the wrong people and should be deleted.</p>
<p>Palestinians support from International Financial Institutions</p>	<p>If the certification is not in effect, the US <i>shall</i> use voice, vote, and influence to prohibit assistance to the Palestinian Authority from international financial institutions.</p>	<p>If the certification is not in effect, the US <i>should</i> use voice, vote, and influence to prohibit assistance to the Palestinian Authority from international financial institutions.</p> <p>The bill provides an exception to this effort to prohibit assistance in the case of assistance to meet basic human needs, including food, water, medicine, and sanitation; and assistance to promote democracy, human rights, freedom of the press, non-violence, reconciliation, and peaceful co-existence, provided that the aid does not directly benefit Hamas or any other foreign terrorist organization.</p>	<p>The Senate makes the U.S. efforts to block aid to the PA discretionary, rather than mandatory – a constructive change.</p> <p>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>

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<p>“Diplomatic Contacts” with Palestinians</p>	<p>Would bar officials of the Department of State or any other U.S. government agency from having any contacts with any members of any Palestinian terrorist organization organizations until such organization recognizes Israel’s right to exist, renounces terrorism, dismantles terrorist infrastructure, and recognizes and accepts all previous agreements.</p> <p>(Since State is already barred from such contacts, the impact would be restricted to the activities of U.S. intelligence officials.)</p> <p>No waiver is provided.</p>	<p>Would bar officials of the Department of State or any other U.S. official or employees acting under the authority or financed by the Department of State from negotiating with members of any Palestinian terrorist organizations until such organization recognizes Israel’s right to exist, renounces terrorism, dismantles terrorist infrastructure, and recognizes and accepts all previous agreements.</p> <p>An exception is provided for emergencies or humanitarian situations.</p>	<p>The Senate version corrects the House approach by impacting only U.S. official contacts, rather than seeking to bar U.S. intelligence activities. It is not clear that even if the stated conditions for contacts were met the U.S. could talk to these groups, since there are existing laws barring official contacts with foreign terrorist organizations.</p> <p>The Senate’s inclusion of an exception for emergencies or humanitarian situations is a positive change.</p>
<p>International Efforts</p>		<p>The Secretary of State shall submit to Congress an annual report on US efforts to ensure that, if the required certification is not in effect, other countries and international organizations do not provide aid to the Palestinian Authority and identifying countries and international organizations that are providing assistance to the PA, and the amount and nature of such assistance.</p>	<p>The Senate adds this section to address Congressional concerns about other countries and organizations granting support to a Hamas-run Palestinian Authority.</p>

Both versions omit a key element of effective sanctions legislations: a sunset clause.

A sunset clause linked to the next Palestinian elections and the formation of the next government would provide a clear political horizon of Palestinians who are not affiliated with Hamas or any foreign terrorist organization, and would permit the U.S. to meet positive new developments on the Palestinian front with an effective and constructive policy response.