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EXECUTIVE SUMMARY

President Joe Biden has said he wants to resume aid to the Palestinians, but recent Palestinian laws are making it difficult for him.

Congress has banned US aid to the Palestinian Authority (PA), citing the PA’s incitement of terrorists and financial rewards to terrorists and their families. To open the way for aid to Palestinians, the Biden team is distinguishing between the PA, which Congress has deemed pro-terrorist, and Palestinian non-governmental organizations (NGOs), which Congress has not classified as such. But the PA has blurred that distinction.

If Congress determines that NGOs are no longer independent of the PA, or that US-provided NGO funding will be shunted into the PA treasury, it could compel the administration to suspend all US aid to the West Bank and Gaza.

The PA’s recent Law-by-Decree No. 7/2021 is the latest in more than two decades of PA actions aimed at eroding the independence of civil society. The decree requires that NGO work plans “conform” with those of the PA. It authorizes Palestinian officials to transfer NGO funds to the PA treasury with virtually no transparency. It also imposes new fees on NGOs, effectively compelling donors to NGOs to subsidize the PA. If US aid is caught up in that scheme, it would violate US laws prohibiting economic assistance to the PA.
Congress can be expected to examine the PA’s control of NGOs as part of its oversight of US aid.

This study summarizes the PA’s gradual nationalization of Palestinian civil society organizations. It recommends that Congress review which US funds have ended up in the PA treasury, examine whether NGOs are independent of the PA, and determine whether US economic aid is precluded by Law-by-Decree No. 7/2021 or other PA laws and regulations.
INTRODUCTION

Though President Joe Biden is eager to resume aid to the Palestinians, Palestinian leaders are making it difficult for him.

For years, US officials have tried to use economic aid to improve Palestinian civil society, but the Palestinian Authority (PA) has embarrassed their efforts. The PA adopted laws providing financial rewards to terrorists and their families, a system of incentivizing terrorist attacks on Israelis commonly known as “pay-for-slay.” Congress took a while to notice those laws, but when it finally did, it said it did not want to subsidize terrorism by funding the PA. In 2018, Congress passed the Taylor Force Act, which prohibits US aid from benefitting the PA.

To reopen a path by which to send aid to the Palestinians, the Biden administration is drawing a distinction between the PA and Palestinian civil society. Congress gave the administration this opening by categorizing the former as pro-terrorist, but not the latter.

The PA is in the process of plugging up that opening.

Palestinian leaders have been eliminating the distinction between the PA and private Palestinian associations by increasing official control over those associations. The PA is systematically crushing...
civil society as it moves toward a more thorough authoritarianism. Its drive for total domination over Palestinian communal life is a sad story for the Palestinian people—and now also a legal problem for the Biden administration.

In March 2021, PA President Mahmoud Abbas issued Law-by-Decree No. 7/2021, which effectively nationalizes Palestinian non-governmental organizations (NGOs). This is a major roadblock for US economic assistance, though Abbas says the Palestinians “highly value” the aid. Palestinian NGOs were so angry about the law-by-decree that the PA suspended its enforcement, promising “consultations” with the NGOs. But the law-by-decree has not been repealed.

In upholding the integrity of the Taylor Force Act, Congress can be expected to scrutinize the Biden administration’s position that Palestinian civil society is distinct from the organs of the PA. US officials will need to show appropriators that US funds, despite the PA’s power grab, are not benefiting the PA. If the relevant congressional committees conclude that the PA has effectively taken over Palestinian NGOs, or that the PA, through Decree No. 7/2021 or otherwise, is siphoning US funds into its treasury, they will demand suspension of US aid to the West Bank and Gaza, despite the administration’s desire to resume the flow of funds.

THE GRADUAL NATIONALIZATION OF PALESTINIAN CIVIL SOCIETY

A Palestinian professor at Birzeit University said in 2000 that Palestinian NGOs are under constant threat from the PA’s “ever-growing authoritarianism.” This is even more true today. Decree No. 7/2021 is the latest example. Understanding its effect on US policy requires examining how the PA has degraded NGOs’ independence.

From the moment the PA was established under the Oslo Accords in 1994, the Palestinian NGO community has had an adversarial relationship with it. Palestinian civil society groups existed long before Oslo. When PLO chairman Yasser Arafat arrived in the West Bank and Gaza, NGOs provided an “independent platform and…breathing space” for the PLO’s opponents, wrote one Palestinian civil society leader who is now the PA’s ambassador to Austria. Palestinian NGOs thus
represented a complex problem for Arafat. Civil society organizations, especially human rights groups, threatened his consolidation of power, but they also, according to the Birzeit scholar, “remained potent symbols of national struggle and unity.”

NGO leaders secured a major win in 2000, when Arafat signed an NGO law that was globally hailed as the gold standard for the Arab world. Indeed, the Palestinians’ NGO lobby wrote the original drafts of Law No. 1/2000 on Charitable Associations and Civil Society Organizations (CSOs). Arafat managed, however, to secure a concession that was a clear warning of danger. The law assigned NGO regulation to the interior minister, who also oversaw the Preventive Security force that monitored and arrested opponents of the PA’s rule.

PA officials used propaganda to discredit private civil society groups. Within months of the enactment of the CSO Law, Arafat launched a media campaign to discredit NGOs, accusing them of “collaboration” with Israel.

In 2007, during the civil war between his Fatah faction and Hamas, Arafat’s successor, Mahmoud Abbas, issued the first amendment to the CSO law. Promptly after Abbas dissolved the Fatah-Hamas unity government and declared a state of emergency, the 2007 amendment to the CSO law authorized the interior minister “to immediately take appropriate measures against the associations…which engage in activities in violation of the law.” What those activities were was not defined. The minister summarily dissolved more than 100 organizations on security grounds.

The CSO law’s next amendment, in 2011, allowed the PA to make money off foreign governments’ generosity. Before the amendment, NGO directors decided how to dispense their assets. If they failed to do so, PA officials could step in, but they had to transfer the assets to private Palestinian associations “of a similar purpose.” Law-by-Decree No. 6/2011 undid this protection by authorizing the interior ministry to overrule NGO directors’ wishes and transfer NGO assets to the PA treasury.
The 2011 amendment thus created an incentive for the PA, cash-strapped because of US aid restrictions, to dissolve NGOs and pour their assets into its own coffers. In 2020, the Arab Gulf states reduced their aid to the PA by 85%, intensifying its financial crisis. PA officials are thus even more motivated to seize NGO funds to make up for revenue losses.

US government funds could easily be diverted into PA coffers. US officials will need to explain to Congress what, if anything, they can do to ensure compliance with the Taylor Force Act, which prohibits US aid to Palestinian NGOs from ending up in the PA treasury.

“A MERGER OF CIVIL SOCIETY WITHIN THE GOVERNMENT”

In March 2021, Abbas issued Law-by-Decree No. 7/2021, all but erasing the line between government and civil society. The decree requires that NGO work “conform” with government plans. NGOs are now required to submit their work plans and estimated budgets for PA approval at the start of every year, and PA officials will be able to halt plans before they are begun.

One Palestinian NGO called this “a merger of civil society within the government” that “directly infringes upon the independence of associations.” Another observed that “CSOs will be dealt with as if they were government administrations, reporting to and operating under the orders of the competent ministry.”

Decree No. 7/2021 ended the last bit of transparency in the process by which the PA transfers NGO funds to its treasury. It did away with the requirement that the government appoint a third-party liquidator to take account of an NGO’s assets. Without an outside liquidator, the interior minister can arrange for a convenient miscount of the NGO’s funds, allowing some to slip into his wallet before the remainder moves to the treasury. This of course worsens the widely lamented problem of official corruption in PA-controlled territory.

The new Law-by-Decree also instructs the PA Council of Ministers to increase fees charged to NGOs. The groups will now have to pay for new applications submitted to the interior ministry, ensuring that donors to the NGOs are indirectly funding the PA.
Blowback from civil society leaders against the new Law-by-Decree was so severe that PA President Abbas amended it just two months after issuance, delaying implementation pending “consultations” with relevant private parties. This is not a repeal, and it is unclear what will result. Given the steady assault on CSOs by the PA since its founding and Abbas’s power consolidation, the private parties have little reason to hope for major concessions.

US officials need to understand the new PA law and determine whether the State Department and US Agency for International Development can continue lawfully to provide funds to Palestinian NGOs.

**Implications for US Law and Policy Recommendations**

At the UN Security Council in January, Acting US Ambassador Richard Mills said the Biden administration does not believe renewed aid to the Palestinians is “a favor to the Palestinian leadership.” But is it? Now that Biden has pledged $150 million to Palestinians over the next two years, some members of Congress will want to ensure that the funds do not enrich the PA, reward its power grabs, or flow into its leaders’ personal bank accounts.

Congress can take several constructive steps here.

**First, it can confirm that US assistance has not ended up in PA coffers except for when intended.** It appears that no one in Washington noticed that a decade ago, Decree No. 6/2011 authorized the Palestinian interior minister to transfer NGO funds to the PA treasury. Oversight committees could require USAID to annually report the status (i.e., active, inactive but extant, or dissolved) of all Palestinian NGO grantees and sub-grantees that have received US funds since 2011. For any dissolved grantee or sub-grantee, the report should note the fate of its assets—were they transferred to the association named by the dissolved group’s leaders, to an association chosen by the interior ministry, or to the PA treasury? Annual appropriations bills could then mandate a “dollar-for-dollar” reduction from West Bank/Gaza annual funding in relation to the total NGO assets seized by the PA in the previous year under Decree No. 6/2011 or another authority.
Second, lawmakers can examine whether NGOs are really independent from the PA despite Decree No. 7/2021, which (when it comes into effect) will force NGO work plans to “conform” to the plans of the PA. As noted, Palestinian civil society leaders have condemned the law for effectively nationalizing their associations. Congress can legally forbid the US government from granting awards or sub-awards to any NGO that complies with Decree No. 7/2021’s mandate to submit a work plan to the PA government.

Congress has made clear its view that, given the PA’s pay-for-slay program, supporting the PA financially is subsidizing terrorism. Since fiscal year 2015, annual appropriations bills have required the State Department to reduce assistance to the PA for that reason. In 2018, Congress went farther, passing the Taylor Force Act to forbid the US government from providing economic assistance (with a few exceptions) that “directly benefits” the PA as long as it continues its policies of “pay-for-slay” and terrorism incitement. The State Department confirmed to Congress earlier this year that the PA continues pay-for-slay. (For his part, Abbas has sworn not to end prisoner payments even “if we had [just] a single penny left.”)

Last year’s Nita M. Lowey Middle East Partnership for Peace Act authorized $250 million over five years for the creation of two new funds to promote peace-building between Israelis and Palestinians. It, too, prohibits providing “financial assistance to the national government of any foreign country” or to “the Palestinian Authority or the Palestine Liberation Organization.”

It is possible that Congress will decide that Palestinian NGOs that comply with Decree No. 7/2021 are disqualified from receiving ESF (under the Taylor Force Act) and money from the USAID and DFC funds established by the Lowey Act.

Finally, Congress can decide that, given money’s fungibility, US assistance to Palestinian NGOs has been precluded by PA Decree No. 7/2021. An active USAID notice of funding opportunity declares:
US legislation provides that none of the funding under this Award may be “obligated or expended with respect to providing funds to the Palestinian Authority.” In accordance with that prohibition, the Recipient shall not provide any cash to the Palestinian Authority (PA); to any ministry, agency or instrumentality of the PA; to any municipality or other local government unit; or to any full-time or part-time employee or official of any of the foregoing entities. This restriction applies to payments of any kind, including salaries, stipends, fees, honoraria, per diem, and so forth.\textsuperscript{33} [emphasis added]

If an NGO is active thanks to US support, but PA law requires it to pay fees to the PA treasury, then the US aid is subsidizing the PA, contrary to the Taylor Force Act and Lowey Act.

**CONCLUSION**

The Palestinian Authority has put the Biden administration in a serious bind. It is not clear that the administration’s hope to revive US aid through Palestinian NGOs can be fulfilled lawfully. If the aid doesn’t flow, it won’t be because President Biden does not want to send it. It would be because the PA has chosen not to make it a legal option.

It’s important to understand why that option would be unavailable. It would be because the Palestinian Authority, though it says it wants the aid, has chosen to set priorities that limit the options of the US government.

For the aid to resume, something has to give. Either the US government has to decide it is comfortable subsidizing the PA’s pay-for-slay program, or the PA has to decide that US funds are more important than rewarding terrorists.
NOTES


9 Hammami, “Palestinian NGOs Since Oslo: From NGO Politics to Social Movements?” p. 18.

10 Hammami, “Palestinian NGOs Since Oslo: From NGO Politics to Social Movements?” p. 18.


12 Hammami, “Palestinian NGOs Since Oslo: From NGO Politics to Social Movements?” p. 19.


23 Law-by-Decree No. 18/2021 on Suspending the Enforcement of Law-by-Decree No. 7/2021 Amending Law No. 1/2000 on Charitable

24 “Palestinian civil society leaders object to Abbas’s recent fiat, but they have no legislative or judicial recourse. The Palestinian legislature has not met since 2007. And Abbas has been undermining the courts for years. In 2016 he created the Constitutional Court, which the European Council of Foreign Relations describes as a political tool for Abbas to wield against rival sin Hamas and his own party, Fatah. All nine judges were unilaterally appointed by Abbas. In 2021, Abbas named an ally as chief justice of the High Judicial Council and forced other judges into “early retirement.” From Dore Feith, “The PA Just Made It Harder for Biden to Help Palestinians,” Newsweek, March 30, 2021, https://www.newsweek.com/pa-just-made-it-harder-biden-help-palestinians-opinion-1579164.


27 US taxpayer dollars usually fund Palestinian NGOs in two ways. A Palestinian NGO might win an award directly from the US Government, in which it would be a grantee; or it can win a sub-award from an entity that received the award from the US Government, in which case it would be a sub-grantee, usually of an American or European organization that operates in the West Bank and Gaza. It is critical that all recommendations are applied to any type of relationship a Palestinian NGO has with the US Government.


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