



# U.S. Foreign Aid to the Palestinians

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July 16, 2009

Congressional Research Service

7-5700

[www.crs.gov](http://www.crs.gov)

RS22967

## Summary

In March 2009, the Obama Administration pledged \$900 million in U.S. assistance to the Palestinians to address both post-conflict humanitarian needs in Gaza and reform, security, and development priorities in the West Bank. The enactment of the Supplemental Appropriations Act, 2009 (P.L. 111-32) on June 24, 2009 appropriated over \$800 million toward the amount pledged in March, putting total U.S. appropriations since January 2009 well past the amount pledged. P.L. 111-32 also included a provision that applies different conditions than those applied by previous FY2008 and FY2009 appropriations legislation to possible U.S. assistance to a Palestinian power-sharing government that includes Hamas. Congress is currently considering FY2010 appropriations legislation (H.R. 3081 and S. 1434) that would provide an additional \$500 million in bilateral assistance to the Palestinians.

Since the signing of the Oslo Accord in 1993 and the establishment of limited Palestinian self-rule in the West Bank and Gaza Strip in 1994, the U.S. government has committed approximately \$3 billion in bilateral assistance to the Palestinians. Since the death of Yasser Arafat in November 2004, U.S. assistance to the Palestinians has been averaging about \$360 million a year. During the 1990s, U.S. foreign aid to the Palestinians averaged approximately \$75 million per year. Despite more robust levels of assistance this decade, Israeli-Palestinian conflict and Hamas's heightened role in Palestinian politics have made it more difficult to implement effective and lasting aid projects that serve U.S. interests.

U.S. aid to the Palestinians has fluctuated considerably over the past three years, largely due to Hamas's changing role within the Palestinian Authority (PA). After Hamas led the PA government for over a year, its forcible takeover of the Gaza Strip in June 2007 led to the creation of a non-Hamas government in the West Bank—resulting in different models of governance for the two Palestinian territories. Since then, the U.S. has dramatically boosted aid levels to bolster the PA in the West Bank and President Mahmoud Abbas vis-à-vis Hamas.

Because of congressional concerns that, among other things, U.S. funds might be diverted to Palestinian terrorist groups, much of this aid is subject to a host of vetting and oversight requirements and legislative restrictions. For FY2009, \$960 million in bilateral assistance—which includes projects funded through the U.S. Agency for International Development; direct budgetary assistance to the PA; and training, non-lethal equipment, facilities, and strategic planning for PA civil security forces—have already been appropriated for the Palestinians, and the State Department has already contributed \$98.5 million to the U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Some of these funds have gone toward emergency humanitarian needs in Gaza created by the 2008-2009 Israel-Hamas conflict.

Experts advise that PA stability appears to hinge on improved security, economic development, Israeli cooperation, and the continuation of high levels of foreign assistance. The possibility of a consensus or unity government to address the problem of divided rule among Palestinians could lead to a full or partial U.S. aid cutoff if Hamas is included in the government and does not change its stance toward Israel. 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

In March 2009, the Obama Administration pledged \$900 million in U.S. assistance to the Palestinians to address both post-conflict humanitarian needs in Gaza and reform, security, and development priorities in the West Bank. The enactment of the Supplemental Appropriations Act, 2009 (P.L. 111-32) on June 24, 2009 appropriated over \$800 million toward the amount pledged in March, putting total U.S. appropriations since January 2009 well past the amount pledged. P.L. 111-32 also included a provision that applies different conditions than those applied by previous FY2008 and FY2009 appropriations legislation to possible U.S. assistance to a Palestinian power-sharing government that includes Hamas. For a fuller description of the pledge and subsequent appropriations, see “The \$900 Million U.S. Pledge and the International Donors’ Effort” below. Congress is currently considering FY2010 appropriations legislation (H.R. 3081 and S. 1434) that would provide an additional \$500 million in bilateral assistance to the Palestinians.

Since the signing of the Oslo Accord in 1993 and the establishment of limited Palestinian self-rule in the West Bank and Gaza Strip in 1994, the U.S. government has committed approximately \$3 billion in bilateral assistance to the Palestinians. The 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 PA institutions, through partnerships with U.S. and Palestinian organizations. Nevertheless, significant legislative conditions, limitations, and restrictions remain attached to certain aid given to Palestinians.<sup>1</sup>

Since the death of Yasser Arafat in November 2004, U.S. assistance to the Palestinians has been averaging about \$360 million a year. During the 1990s, U.S. foreign aid to the Palestinians averaged approximately \$75 million per year. Despite more robust levels of assistance this decade, Israeli-Palestinian conflict and Hamas’s heightened role in Palestinian politics have made it more difficult to implement effective and lasting aid projects that serve U.S. interests. Contributions from the United States to the U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) (which have been made since the time of UNRWA’s inception in 1950) have continued.

## Overview and Recent Developments

The level of U.S. assistance to the Palestinians—among the largest per capita recipients of foreign aid worldwide<sup>2</sup>—has fluctuated considerably since it was initiated following the establishment of limited Palestinian self-rule in the mid-1990s. Fluctuations have been particularly significant over the past three years—due mainly to the on-again, off-again role of Hamas within the Palestinian Authority (PA). Hamas is designated as a Foreign Terrorist Organization (FTO) by the U.S. State Department. After the 2006 Hamas victory in Palestinian Legislative Council elections, U.S. assistance to the Palestinians was restructured and reduced. The United States halted direct

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<sup>1</sup> See the Omnibus Appropriations Act, 2009 (P.L. 111-8), Division H, Title VII, Secs. 7036-7040. These conditions include a restriction on aid to Hamas (including Hamas affiliates and any government of which Hamas is a member) or to a Palestinian state unless commitments toward peaceful coexistence with Israel are made and other requirements met by certain Palestinian parties.

<sup>2</sup> See U.N. Development Programme 2007/08 Human Development Report 18: Flows of Aid, Private Capital and Debt at <http://hdrstats.undp.org/indicators/171.html>.

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 unity government (February to June 2007). During that time, U.S. policymakers demanded unsuccessfully that Hamas renounce, among other things, violence and its commitment to the destruction of the state of Israel.

Subsequent events, however, altered the situation dramatically. In June 2007, Hamas forcibly took control of the Gaza Strip. PA President Mahmoud Abbas (the effective head of the Fatah party), calling the move a “coup,” dissolved the unity 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 Palestinian statehood. 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 thus far advocated a similar approach.

Following the outbreak of the 2008-2009 Gaza conflict between Israel and Hamas, the United States provided approximately \$65 million in emergency U.S. humanitarian assistance for Palestinians in the Gaza Strip. These funds were channeled through the U.S. Agency for International Development (USAID) and through international organizations such as UNRWA and the International Committee of the Red Cross. For a fuller description of these emergency contributions, please see CRS Report R40101, *Israel and Hamas: Conflict in Gaza (2008-2009)*, coordinated by Jim Zanotti.

In March 2009, the Obama Administration pledged \$900 million in U.S. assistance to the Palestinians to address both post-conflict humanitarian needs in Gaza and reform and development priorities in the West Bank. The enactment of the Supplemental Appropriations Act, 2009 (P.L. 111-32) on June 24, 2009 appropriated over \$800 million toward the amount pledged in March, putting total U.S. appropriations since January 2009 well past the amount pledged. P.L. 111-32 also included a provision that applies different conditions than those applied by previous FY2008 and FY2009 appropriations legislation to possible U.S. assistance to a Palestinian power-sharing government that includes Hamas. For a fuller description of the pledge and subsequent appropriations, see “The \$900 Million U.S. Pledge and the International Donors’ Effort” below. Congress is currently considering FY2010 appropriations legislation (H.R. 3081 and S. 1434) that would provide an additional \$500 million in bilateral assistance to the Palestinians.

International efforts to contribute to the post-conflict reconstruction of Gaza have begun (see “International Pledges and the Gaza Reconstruction Effort” below), and U.S. policymakers have expressed interest in participating. Questions remain, however, over how reconstruction assistance given through the PA or other entities or mechanisms can be effective given that Hamas still controls Gaza. Some recommend that the United States and other actors—particularly Europeans and Gulf Arab states—coordinate their efforts informally, if not directly, with Hamas. Others reject this recommendation as one that would possibly strengthen Hamas through *de facto* recognition of it as having a legitimate governing role in Gaza.

## Types of U.S. Bilateral Aid to the Palestinians

**Table 1. U.S. Bilateral Assistance to the Palestinians, FY2004-FY2010**

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

| Account                      | FY2004      | FY2005       | FY2006         | FY2007        | FY2008       | FY2009 <sup>a</sup> | FY2010 Request |
|------------------------------|-------------|--------------|----------------|---------------|--------------|---------------------|----------------|
| ESF                          | 74.5        | 224.4        | 148.5          | 50.0          | 389.5        | 776.0               | 400.4          |
| P.L. 480 Title II (Food Aid) | -           | 6.0          | 4.4            | 19.488        | -            | -                   | -              |
| INCLE <sup>b</sup>           | -           | -            | -              | -             | 25.0         | 184.0               | 100.0          |
| Transition Aid               | -           | -            | 0.343          | -             | -            | -                   | -              |
| <b>Total</b>                 | <b>74.5</b> | <b>230.4</b> | <b>153.243</b> | <b>69.488</b> | <b>414.5</b> | <b>960.0</b>        | <b>500.4</b>   |

**Sources:** U.S. Department of State, 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. Funding for FY2009 to date has come from the Supplemental Appropriations Act, 2008 (P.L. 110-252), the Omnibus Appropriations Act, 2009 (P.L. 111-8), and the Supplemental Appropriations Act, 2009 (P.L. 111-32, as explained further by the joint explanatory statement in H.Rept. 111-152).
- b. Does not include \$86.362 million reprogrammed into the INCLE account by President Bush in January 2007 (see “Direct Assistance to the Palestinian Authority” below).

## Project Assistance Through USAID

### Types of Funding Programs

Most aid to the Palestinians is appropriated through the Economic Support Fund (ESF) account and provided by USAID to U.S.-based non-governmental organizations operating in the West Bank and the Gaza Strip.<sup>3</sup> Funds are 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).

### Vetting Requirements and Procedures

USAID’s West Bank and Gaza program is subject to a vetting process (for non-U.S. organizations) and to yearly audits intended to ensure that funds are not diverted to Hamas or

<sup>3</sup> The FY2009 Supplemental Justification, Department of State and U.S. Agency for International Development, p. 46, states that “Implementation of programs in Gaza is dependent on the establishment of a durable ceasefire, the creation of an operating environment in which Hamas does not interfere with USG-funded programs and activities, and the ability to move essential materials and commodities into Gaza. We will work with the Palestinian Authority and our implementing partners to follow established safeguards that will ensure that our funding is only used where, and for whom, it is intended.”

other organizations classified as terrorist groups by the U.S. government.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

Other sources corroborate the assertion made in USAID’s statement that its West Bank and Gaza program is one of the most, if not the most, rigorously vetted USAID programs worldwide.<sup>7</sup> A May 2009 General Accountability Office (GAO) report found that USAID had strengthened its

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<sup>4</sup> P.L. 111-8, Division H, Title VII, 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. 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 she has determined to be involved in or advocating terrorist activity.”

<sup>5</sup> “Audit: Terrorists Got U.S. Aid; Agency’s Screening Called Inadequate,” *Chicago Tribune*, November 16, 2007. In February 2008, then USAID Administrator and Director of U.S. Foreign Assistance Henrietta Fore said, in testimony before the House Appropriations Subcommittee on State, Foreign Operations, and Related Programs, that Congress’s “strong support and vigilance” was encouraging the adoption of more rigorous vetting measures. 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.

<sup>6</sup> 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 U.S. Government Accountability Office (GAO), *Measures to Prevent Inadvertent Payments to Terrorists Under Palestinian Aid Programs Have Been Strengthened, but Some Weaknesses Remain*, GAO Foreign Assistance Report 09-622, May 2009, p. 15, available at <http://www.gao.gov/new.items/d09622.pdf>.

<sup>7</sup> See Walter Pincus, “Plan for Terror Screening of Aid Groups Cut Drastically,” *Washington Post*, August 30, 2007; *Federal Register*, vol. 2, no. 36, pp. 39042-39044. The statement issued by USAID to CRS on February 5, 2009 directly challenged a recent article’s allegation that USAID had not yet implemented its new “partner vetting system” (PVS) in West Bank/Gaza. See Matthew Levitt, “How Not to Fund Hamas: Scrutinize Those Who Receive U.S. Aid,” *New York Daily News*, February 4, 2009. The USAID statement asserted that the article’s author was probably confusing the already rolled-out West Bank/Gaza pilot PVS with the PVS that was awaiting final approval to be rolled out for USAID’s other worldwide programs.

antiterrorism politics and procedures in response to recommendations GAO had made in a 2006 report.<sup>8</sup>

## Direct Assistance to the Palestinian Authority

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.<sup>9</sup> Current law also places conditions on aid to any power-sharing PA government “of which Hamas is a member” (for further discussion, see “Hamas’s Role in a “Unity Government”—Different Approach to Aid Conditions?” and “Hamas and a “Unity Government”?” below). Even after money is transferred to the PA’s treasury account, the U.S. retains prior approval of any transactions from that account, along with a three-year power of audit over those funds.<sup>10</sup>

Recent instances in which the United States has provided direct assistance to or for the benefit of the PA as a result of special presidential action include the following:

- In January 2007, President Bush reprogrammed \$86.362 million in prior-year funding into the International Narcotics Control and Law Enforcement (INCLE) account to support PA civil security forces loyal to President Abbas (see “U.S. Security Assistance to the Palestinian Authority” below).<sup>11</sup> Chairwoman Nita M. Lowey of the House Appropriations Subcommittee for State, Foreign Operations, and Related Programs put a hold on the funds in February 2007, reportedly seeking assurances that they would only be used for non-lethal assistance.<sup>12</sup> Obligation of the funds for non-lethal purposes eventually began in June 2007, the month that the Hamas-led unity government was dissolved and the new Fayyad PA government was formed.<sup>13</sup>
- In June 2007, President Bush issued a waiver to provide an additional \$18 million in direct assistance to the PA to be used for a variety of purposes, including democracy assistance and security assistance.<sup>14</sup>
- In February 2008, President Bush issued a waiver to provide \$150 million in budgetary assistance to the PA from the ESF account to “avert a serious and

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<sup>8</sup> See GAO, 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.

<sup>9</sup> See P.L. 111-8, Division H, Title VII, Sec. 7040 (“Limitation on Assistance for the Palestinian Authority”).

<sup>10</sup> Congressional briefing with State Department and USAID officials, July 9, 2009.

<sup>11</sup> See Presidential Determination No. 2007-11. Under Chapter 8 of Part I (Section 481) of the 1961 Foreign Assistance Act (as amended): “Notwithstanding any other provision of law, the President is authorized to furnish assistance to any country or international organization, on such terms and conditions as he may determine, for the control of narcotic and psychotropic drugs and other controlled substances, or for other anticrime purposes.”

<sup>12</sup> See “Splits Between U.S. and Europe Over Aid for Palestinians,” *International Herald Tribune*, February 22, 2007.

<sup>13</sup> CRS conversation with U.S. Department of State official, September 16, 2008.

<sup>14</sup> See Presidential Determination No. 2007-20.

immediate financial crisis.”<sup>15</sup> Chairwoman Lowey again declared a hold, requesting greater details about the funds’ allocation.<sup>16</sup> The funds were disbursed to the PA after the State Department delivered a certification (dated March 14, 2008) directly to Chairwoman Lowey stating that the PA had established a single treasury account and a single civil service payroll roster.<sup>17</sup>

- In October 2008, another \$150 million in budgetary assistance from the ESF account was provided to the PA in October 2008 via presidential waiver.<sup>18</sup>
- In July 2009, \$200 million in ESF money (already appropriated pursuant to P.L. 111-32) is expected to be transferred to the PA in the wake of a waiver issued by President Obama on July 8.<sup>19</sup>

## U.S. Security Assistance to the Palestinian Authority<sup>20</sup>

As mentioned above, aid has been given to train, reform, advise, house, and provide non-lethal equipment for PA civil security forces 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. This assistance has come from the INCLE account—to which a total of \$295.3 million has been appropriated or reprogrammed for use in the West Bank since 2007.<sup>21</sup> Additional INCLE assistance of \$100 million for the West Bank has been proposed by the Obama Administration for FY2010, and this proposal has been passed by the House as part of H.R. 3081.

Since Hamas gained control of the Gaza Strip, Lt. Gen. Keith Dayton, the U.S. Security Coordinator (USSC) for Israel and the Palestinian Authority, has helped with the training of roughly 400 Presidential Guardsmen and 1,700 National Security Forces troops at the International Police Training Center near Amman, Jordan.<sup>22</sup> The USSC reportedly plans to help organize and train seven additional 500-man NSF battalions. Most reports agree that law and order have improved where these PA forces have been deployed. Yet, uncertainty remains over the durability of these improvements and their connection with broader Palestinian economic and civil society development and with progress on Israeli-Palestinian negotiations, as well as over the willingness and ability of the forces to incapacitate militants. The USSC program exists

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<sup>15</sup> See Presidential Determination No. 2008-12.

<sup>16</sup> “Appropriator Wants Palestinian Authority Aid on Hold Until Accountability in Place,” *CQToday*, March 4, 2008.

<sup>17</sup> The certification was required by the 2008 foreign operations appropriations bill. See Consolidated Appropriations Act, 2008 (P.L. 110-161), Division J, Title III, Economic Support Fund.

<sup>18</sup> See Presidential Determination No. 2009-02.

<sup>19</sup> See Presidential Determination No. 2009-23.

<sup>20</sup> For further information on this subject, see CRS Report R40664, *U.S. Security Assistance to the Palestinian Authority*, by Jim Zanotti.

<sup>21</sup> P.L. 111-32 also included a provision stating that the “Secretary of State shall work assiduously to facilitate the regular flow of people and licit goods in and out of Gaza at established border crossings.” The joint explanatory statement of H.Rept. 111-152 stated that of the funding for Nonproliferation, Anti-Terrorism, Demining and Related Programs (NADR), “\$77,000,000 is provided for the Nonproliferation and Disarmament Fund for nuclear dismantlement and related activities, as well as for border security equipment, training, and program management to prevent smuggling of illicit goods into Gaza.”

<sup>22</sup> See Adam Entous, “Palestinian Forces Return from U.S.-Funded Training,” *Reuters*, May 28, 2008; “500 Palestinian Security Force Members Head to Jordan for U.S.-Funded Training,” *Reuters*, September 18, 2008.

alongside a European Union police and justice sector train-and-equip program (known as EUPOL COPPS—the EU Police Coordinating Office for Palestinian Police Support), and alongside other assistance and training programs reportedly provided to Palestinian security forces and intelligence organizations by various countries.<sup>23</sup> The aspiration to fully 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 unfulfilled.

Some Palestinians and outside observers assert that the effectiveness and credibility of PA operations are undermined by Israeli restrictions—including curfews, checkpoints, no-go zones, and limitations on international arms and equipment transfers—as well as by Israel’s own security operations in the West Bank<sup>24</sup> and its December 2008-January 2009 military campaign in Gaza. Israel claims that its continuing operations are necessary in order to reduce the threat of terrorism emanating from the West Bank. 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.

## 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 1947-1949 Arab-Israeli war and their families—now comprising approximately 4.6 million Palestinians in Jordan, Syria, Lebanon, the West Bank, and Gaza.<sup>25</sup> 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 nearly \$3.5 billion in contributions (see **Table 2** below).

According to the State Department’s Bureau of Population, Refugees, and Migration (PRM), U.S. contributions to UNRWA for FY2008 totaled approximately \$184.7 million.<sup>26</sup> Thus far in FY2009, there have been two U.S. contributions to UNRWA: a December 30, 2008 MRA contribution of \$85 million toward UNRWA’s 2009 appeals, and a January 27, 2009 ERMA

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<sup>23</sup>See, e.g., “Russia Rivals US for Palestinian Security Services Training,” *Jane’s Intelligence Digest*, September 28, 2007.

<sup>24</sup> See International Crisis Group, *Ruling Palestine II: The West Bank Model?* Middle East Report No. 79, July 17, 2008.

<sup>25</sup> For further information on UNRWA, see CRS Report RS21668, *United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)*, by Rhoda Margesson.

<sup>26</sup> According to PRM, U.S. contributions in 2008 constituted approximately 17.8% of the UNRWA General Fund budget and a major share (up to 25%) of other UNRWA funds benefitting Palestinian refugees in Lebanon, the West Bank, and Gaza. Aggregate contributions from the European Commission and European states (including both EU members and non-members) and regions constitute approximately 60% of all UNRWA contributions, according to UNRWA’s 2006-2007 financial statement. See *UNRWA Financial Report and Audited Financial Statements (for the Biennium Ended 31 December 2007) and Report of the Board of Auditors*, U.N. General Assembly Official Records (63<sup>rd</sup> Session, Supplement No. 5C), 2008.

contribution of \$13.5 million to address post-conflict humanitarian needs in Gaza (part of a \$20.3 million ERMA contribution to various international organizations).<sup>27</sup> It is not clear whether the tensions that arose between Israel and UNRWA during the 2008-2009 Gaza conflict over casualties among UNRWA staff and Palestinian civilians and damage to U.N.-marked property that resulted from Israeli military operations will have a significant and/or lasting effect on UNRWA's future operations in Gaza.<sup>28</sup> Israeli officials explained the relevant incidents as accidental or as occurring in response to fire from Palestinian militants at or adjacent to U.N.-marked grounds.

In February 2009, not long after the cessation of major hostilities in Gaza, Hamas confiscated shipments of UNRWA humanitarian supplies at gunpoint on two separate occasions. UNRWA responded by suspending the shipment of additional goods into Gaza until the supplies were returned. Hamas eventually did return the supplies, and UNRWA resumed aid shipments.

**Table 2. 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 <sup>a</sup> | 98.5           |
| 1999           | 80.5    | <b>TOTAL</b>      | <b>3,491.8</b> |

**Source:** U.S. Department of State

**Notes:** All amounts are approximate.

a. To date.

## Issues for Congress—Vetting and Oversight

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.<sup>29</sup> UNRWA and its supporters, however, maintain that UNRWA officials are fulfilling

<sup>27</sup> See Presidential Determination 2009-15, available at [http://www.whitehouse.gov/blog\\_post/relief\\_for\\_gaza/](http://www.whitehouse.gov/blog_post/relief_for_gaza/).

<sup>28</sup> For further information on U.S. humanitarian assistance in relation to the Gaza conflict and on Israel-UNRWA tensions during the Gaza conflict, see CRS Report R40101, *Israel and Hamas: Conflict in Gaza (2008-2009)*, coordinated by Jim Zanotti.

<sup>29</sup> See James G. Lindsay, *Fixing UNRWA: Repairing the UN's Troubled System of Aid to Palestinian Refugees*, (continued...)

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, security concerns).<sup>30</sup>

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.<sup>31</sup>

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.”

### **GAO Report—May 2009**

The 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.”<sup>32</sup> Neither report found UNRWA to be in noncompliance with Section 301(c), and to date, no arm of the U.S. government has made such a finding. The following are some points regarding UNRWA from the 2009 report:

- The State Department has not established written criteria to use in evaluating UNRWA's compliance with Section 301(c). State officials said compliance is evaluated based on State's “internal level of confidence that UNRWA has taken

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(...continued)

Washington Institute of Near East Policy Policy Focus #91, January 2009. 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.

<sup>30</sup> A direct written rebuttal by Israeli academic Maya Rosenfeld to the former UNRWA general counsel's critiques is carried by UNRWA's website at [http://www.un.org/unrwa/allegations/Rejoinder2Lindsay\\_jan09.pdf](http://www.un.org/unrwa/allegations/Rejoinder2Lindsay_jan09.pdf). UNRWA also maintains a “Setting the Record Straight” section on its website to address common critiques leveled at the agency, available at <http://www.un.org/unrwa/allegations/index.html>. See also Summary of remarks by James G. Lindsay and Andrew Whitley, *UNRWA Nears Sixty: Part of the Solution or Part of the Problem?* Washington Institute for Near East Policy PolicyWatch #1471, February 6, 2009.

<sup>31</sup> Transcript of House Appropriations Subcommittee on State, Foreign Operations and Related Programs hearing: “Supplemental Request,” April 23, 2009.

<sup>32</sup> See GAO, op. cit.

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.” State has not defined the term “all possible measures,” nor has it defined what would constitute noncompliance with Section 301(c). The report recommended that State consider establishing evaluation criteria, and in a May 6, 2009 response to a draft of the report (included as an appendix), State concurred with GAO’s recommendation and said that it would “work together with UNRWA to develop criteria, as appropriate,” without making further specification.<sup>33</sup>

- 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-Qaida 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.<sup>34</sup>
- 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, such as the Department of Treasury’s OFAC list of individuals and entities subject to U.S. sanctions. 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, presumably so that State could alert UNRWA to any potential OFAC list matches. GAO found a few potential matches from among 2002-2009 UNRWA contractors. State said that it is “actively assessing the feasibility of [GAO’s] recommendation.”<sup>35</sup>
- 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.<sup>36</sup>
- 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

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid. 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/Publications/Books/Survey2004-2005.pdf>.

<sup>35</sup> GAO, op. cit.

<sup>36</sup> Ibid.

denied benefits because of suspected militant or terrorist activities or ties, his or her child “would not be disqualified from attending an UNRWA school.”<sup>37</sup>

## **Concerns Over Possible Resettlement of Palestinian Refugees**

During the consideration of the Omnibus Appropriations Act, 2009 (P.L. 111-8), concerns surfaced over rumors being spread via the Internet that part of the Obama Administration’s \$20.3 million contribution to UNRWA, the International Committee of the Red Cross, and the U.N. Office for the Coordination of Humanitarian Affairs made on January 27, 2009 from the Emergency Refugee and Migration Assistance (ERMA) account in the wake of the Gaza conflict (see “Overview” above) might go toward resettlement of Gazan refugees in the United States. Senator John Kyl proposed S.Amdt. 629 (“To provide that no funds may be used to resettle Palestinians from Gaza into the United States”). Kyl, however, withdrew S.Amdt. 629 after receiving a letter from the State Department assuring him that U.S. funds were not being used to resettle Gazans in the United States. It is unclear whether the parties fueling the rumors were aware that ERMA contributions have been routinely made to UNRWA during past presidential administrations and that aid provided to UNRWA generally goes toward basic living needs and services (i.e., food, health care, education, housing) for the Palestinian refugees over which its mandate exists in the places the refugees are already located (the West Bank and the Gaza Strip, Jordan, Syria, Lebanon).

Notwithstanding the State Department’s assurances that ERMA funds were not being used to resettle Gazans in the United States, some have persisted in voicing their concerns on this issue. In a July 2009 response to a CRS request for further clarification, a State Department official stated:

The United States does not resettle Palestinian refugees who fall under the mandate of the UN Relief and Works Agency for Palestine Refugees in the Near East. None of the \$13.5 million in ERMA funds authorized in January 2009 for UNRWA was used to resettle Palestinians to the U.S.<sup>38</sup>

The official did acknowledge that some Palestinian refugees located outside of the territories within UNRWA’s mandate, particularly some located in Iraq, are being processed for resettlement to the United States.

The U.S. has recently resettled Palestinian refugees from Iraq, who are under the responsibility of the United Nations High Commissioner for Refugees (UNHCR). Absent any other durable solution for these individuals, UNHCR has referred for resettlement over 1,500 Palestinians from the Al-Waleed refugee camp in Iraq near the Syrian border to countries that resettle refugees, including the U.S. We are currently processing these individuals and hope to admit many of them by the first quarter of FY2010. In all, 1,350 individuals of Palestinian origin are currently being processed for U.S. resettlement, over 95% of whom are from the Al-Waleed refugee camp. We have also resettled a small number of Iraq-resident Palestinians who were closely associated with the U.S. mission or other U.S. entity in Iraq.<sup>39</sup>

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<sup>37</sup> Ibid.

<sup>38</sup> CRS correspondence with State Department official, July 1, 2009.

<sup>39</sup> Ibid.

The official explained that these refugees are screened for potential security risks.

Palestinians from Iraq undergo screening as if they were Iraqi citizens, including the enhanced security checks undergone by all Iraqi refugee applicants. These procedures consist of name and biometric checks against various additional U.S. Government databases to ensure that the applicants pose no known security risks.<sup>40</sup>

## **FY2009 Supplemental Legislation and Proposed FY2010 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 contains a provision from the joint explanatory statement capping contributions to UNRWA at \$119 million for its operations in the West Bank and Gaza from funds appropriated pursuant to P.L. 111-32. This provision also requires 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.<sup>41</sup> The same reporting requirement, without an accompanying cap on contributions, appears in the current version of H.R. 3081.

## **The \$900 Million U.S. Pledge and the International Donors' Effort**

### **The U.S. Pledge and FY2009 Supplemental Appropriations**

#### **Overview**

An international donors' conference intended to gather support for the Palestinians in the aftermath of the Gaza conflict took place in Sharm al-Sheikh, Egypt on March 2, 2009. At the conference, Secretary of State Hillary Rodham Clinton pledged \$900 million in U.S. assistance to the Palestinians—\$300 million for post-conflict humanitarian purposes in Gaza and \$600 million to forward PA security, institutional reform, and economic development goals in the West Bank.<sup>42</sup> The enactment of the Supplemental Appropriations Act, 2009 (P.L. 111-32) on June 24, 2009

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<sup>40</sup> Ibid.

<sup>41</sup> See H.Rept. 111-151, Joint Explanatory Statement of the Committee of Conference, Title XI, "Migration and Refugee Assistance." Also during the 111<sup>th</sup> Congress, Representative Ileana Ros-Lehtinen, the Ranking Minority Member on the House Committee for Foreign Affairs, has sponsored H.R. 557 (United Nations Transparency, Accountability, and Reform Act of 2009), which includes a section entitled "Withholding of United States Contributions to UNRWA," with over 90 co-sponsors; and Representative Steven Rothman has 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.<sup>41</sup> Both H.R. 557 and H.Con.Res. 29 were referred to the House Committee on Foreign Affairs in January 2009.

<sup>42</sup> See U.S. Department of State Press Release: "United States Assistance to the Palestinians," March 2, 2009, available at <http://www.state.gov/r/pa/prs/ps/2009/03/119925.htm>.

appropriated over \$800 million toward the amount pledged in March, putting actual U.S. appropriations since January 2009 well past the amount pledged (see **Table 3** below). A proposed spending plan for the FY2009 supplemental funding approved pursuant to P.L. 111-32 appears below as **Table 4**.

**Table 3. Appropriations Toward \$900 Million U.S. Pledge to Palestinians**

(in \$ millions)

| <b>Legislative Authority</b>                                               | <b>ESF</b>   | <b>MRA/ERMA</b>   | <b>INCLE</b> | <b>Total</b> |
|----------------------------------------------------------------------------|--------------|-------------------|--------------|--------------|
| Pre-111 <sup>th</sup> Congress Legislation                                 | -            | 20.3 <sup>a</sup> | -            | <b>20.3</b>  |
| FY2009 Omnibus (P.L. 111-8)                                                | 75.0         | 35.0              | 25.0         | <b>135.0</b> |
| FY2009 Supplemental (P.L. 111-32, as explained further by H.Rept. 111-151) | 551.0        | 150.0             | 109.0        | <b>810.0</b> |
| <b>Total</b>                                                               | <b>626.0</b> | <b>205.3</b>      | <b>134.0</b> | <b>965.3</b> |

**Sources:** U.S. Department of State, Office of Management and Budget

**Notes:** All amounts are approximate; the amounts listed do not necessarily reflect all amounts appropriated for aid to the Palestinians under the respective legislative appropriating authorities—they are limited to the amounts specifically connected to the \$900 million pledge.

- a. See “U.S. Contributions to UNRWA” above. See also Presidential Determination 2009-15, available at [http://www.whitehouse.gov/blog\\_post/relief\\_for\\_gaza/](http://www.whitehouse.gov/blog_post/relief_for_gaza/).

#### Table 4. Proposed Spending Plan for FY2009 Supplemental Funding

| <b>Amount</b>                                                                                                                              | <b>Purpose</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Economic Support Fund<br/>(\$551 million total)</b><br><br><i>\$200 million</i><br><br><i>\$156 million</i><br><br><i>\$195 million</i> | <p>Direct budgetary assistance to Palestinian Authority (PA) in West Bank (helping to discharge PA debt obligations, which are primarily incurred in order to pay the salaries of PA employees)</p> <p>Assistance for Gaza (through USAID)<sup>a</sup></p> <ul style="list-style-type: none"> <li>• \$61 million – immediate humanitarian and food relief (through well-established international organizations)</li> <li>• \$54 million – restore essential services and create jobs</li> <li>• \$20 million – household-level economic recovery (i.e., agriculture and livestock) and microenterprise</li> <li>• \$15 million – replenish funds expended on humanitarian assistance during war in Gaza</li> <li>• \$6 million – small-scale community improvement and rebuilding projects (working with non-Hamas municipalities and communities)</li> </ul> <p>Assistance for the West Bank (through USAID)</p> <ul style="list-style-type: none"> <li>• \$93 million – institutional capacity building, education, and social services</li> <li>• \$60 million – promote economic growth</li> <li>• \$30 million – support governance and rule of law</li> <li>• \$12 million – humanitarian assistance</li> </ul> |
| <b>Migration &amp; Refugee Assistance<br/>(\$150 million total)</b><br><br><i>\$125 million</i><br><br><i>\$25 million</i>                 | <p>Emergency humanitarian assistance for West Bank and Gaza (\$119 mil to UNRWA, \$6 mil to International Committee of the Red Cross)</p> <p>Assistance to UNRWA for Palestinian refugees in Lebanon</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>International Narcotics Control<br/>and Law Enforcement<br/>(\$109 million)</b>                                                         | <p>Training and non-lethal equipment assistance to PA security forces in the West Bank, supporting efforts by the U.S. Security Coordinator/Deputy Envoy for Security, Lt. Gen. Keith Dayton; and training and non-lethal equipment assistance to enhance the integrity of the Gaza border</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

**Source:** FY2009 Supplemental Appropriations Request, Office of Management and Budget; FY2009 Supplemental Justification, U.S. Department of State and U.S. Agency for International Development

**Notes:** All amounts are approximate.

a. See footnote 3.

The Israeli daily *Ha'aretz* reported that Secretary Clinton warned PA President Mahmoud Abbas during their March 4 meeting in Ramallah that U.S. pledges would likely be withdrawn if a PA consensus or unity government including Hamas did not meet the conditions that the international Quartet (the United States, the United Nations, the European Union, and Russia) has prescribed for cooperation with a PA government—recognition of Israel's right to exist, renunciation of

violence, and acceptance of previous Israeli-Palestinian agreements (the “Quartet principles”).<sup>43</sup> Many observers believe that either Hamas’s positions on the Quartet principles or its control over Gaza would have to change before the United States might consider dedicating substantial resources toward the reconstruction of buildings and infrastructure in Gaza, with the possible exception of U.N. facilities and other special cases such as the American International School (if necessary construction materials can be brought through Gaza’s border crossings).

### **Hamas’s Role in a “Unity Government” – Different Approach to Aid Conditions?**

The Supplemental Appropriations Act, 2009 (P.L. 111-32) includes a provision that would allow aid to be provided to a power-sharing PA government of which Hamas is a member (see “Hamas and a “Unity Government”?” below) if the President certifies that such a government, *including all of its ministers*, has publicly accepted and is complying with the principles found in Section 620K(b)(1)(A) and (B) of the Foreign Assistance Act of 1961, as amended by the Palestinian Anti-Terrorism Act of 2006 (P.L. 109-446).<sup>44</sup> These “Section 620K principles”—related to the Quartet principles—refer to (1) a public acknowledgment of the Jewish state of Israel’s right to exist and (2) commitment and adherence to previous international agreements (including the Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict, commonly known simply as the “Roadmap”).<sup>45</sup> The version of the provision in P.L. 111-32 regarding aid to a potential power-sharing PA government that was found in the Obama Administration’s FY2009 supplemental budget request did not specify whether all of the government’s ministers would have to join in accepting and complying with the Section 620K principles.<sup>46</sup> This specification was made through the markup process in both Committees on Appropriations.

Each of the provisions regarding a potential power-sharing PA government under FY2008 appropriations legislation (P.L. 110-161 and P.L. 110-252) and the Omnibus Appropriations Act, 2009 (P.L. 111-8) has only remained effective during the particular cycle to which it has pertained, and only with respect to the funds appropriated. In the form in which it was drafted, the provision in P.L. 111-32 follows this pattern. Thus, it does not change any underlying, permanent legislation that pertains to funding authorization, but may only affect appropriations for the cycle to which it pertains. This is in keeping with the general legislative proposition that conditions explicitly attached to yearly appropriations generally do not last beyond the relevant appropriations cycles, unlike stand-alone legislation that does.

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<sup>43</sup> Barak Ravid, “Clinton: U.S. Gaza Aid Tied to Recognition of Israel,” *Ha’aretz*, March 12, 2009.

<sup>44</sup> See P.L. 111-32, Section 1107; U.S. Senate Committee on Appropriations Press Release: “State and Foreign Operations: FY2009 Supplemental Appropriations Summary,” May 12, 2009.

<sup>45</sup> See P.L. 111-32, Section 1107; Palestinian Anti-Terrorism Act of 2006 (P.L. 109-446), Section 2(b)(2). The text of P.L. 111-32, Section 1107 reads, “None of the funds appropriated in this title may be made available for ... any power-sharing government of which Hamas is a member... [However,] assistance may be provided to a power-sharing government only if the President certifies and reports to the Committees on Appropriations that such government, including all of its ministers or such equivalent, has publicly accepted and is complying with the principles contained in section 620K(b)(1)(A) and (B) of the Foreign Assistance Act of 1961.”

<sup>46</sup> Language within the FY2009 supplemental request explaining the proposed provision to designate a PA power-sharing government (instead of Hamas) as the Palestinian party subject to the presidential certification clause states, “It is expected that such a power-sharing government would speak authoritatively for the entire Palestinian Authority government, including its ministries, agencies and instrumentalities.” Office of Management and Budget, FY2009 Supplemental Appropriations Request, April 9, 2009, p. 96.

The provision regarding a potential power-sharing government in P.L. 111-32 differs from the analogous provisions regarding power sharing from the FY2008 appropriations cycle and in the FY2009 omnibus (P.L. 111-8). Under P.L. 111-8, Section 7040(f)(1), a presidential certification permitting aid to a power-sharing government including Hamas appeared to require *Hamas as an organization*, not simply individual members of Hamas within the power-sharing government, to accept the Section 620K principles.<sup>47</sup>

The provision in P.L. 111-32 may have made the conditions under which a power-sharing PA government might receive U.S. assistance less stringent than the conditions attached to the FY2008 legislation and the FY2009 omnibus that focused on Hamas's behavior. Some might maintain, though, that by placing the legislative focus on the behavior of the PA government, the FY2009 supplemental provision might bring the conditions on aid to the PA more in line with the focus found in the Palestinian Anti-Terrorism Act of 2006 (P.L. 109-446) and in executive branch policy (under both the Bush and Obama Administrations) that has existed since Hamas's entry into government in 2006. National Security Council spokesman Benjamin Chang has said that the provision found in P.L. 111-32 "is consistent with our policy. It would prohibit assistance to a government that does not accept the Quartet principles but would preserve the president's flexibility to provide such assistance if that government were to accept and comply with the Quartet principles."<sup>48</sup> The exact correspondence of the provision in P.L. 111-32, when taken in concert with P.L. 109-446 and other existing legislation, with the Quartet principles could be subject to interpretation.<sup>49</sup> Such an interpretation could hang on the definition of such terms as "power-sharing government of which Hamas is a member" and "Hamas-controlled Palestinian Authority."

If the President does not certify that a power-sharing PA government including Hamas has accepted and is complying with the Section 620K principles, P.L. 111-32 permits the President to provide aid to either the PA president or judiciary—by means of a Section 620K(e) waiver on national security grounds—if they are not members of or controlled by Hamas or another foreign terrorist organization.<sup>50</sup> A similar waiver authority allowed the Bush Administration to provide aid to PA President Mahmoud Abbas and his own security forces during the time of the Hamas-controlled government in 2006-2007.

In a House committee hearing on the FY2009 supplemental request held on April 23, 2009, Secretary of State Clinton defended the Administration's proposed provision on a power-sharing government as follows:

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<sup>47</sup> See also P.L. 110-161, Division J, Title III, "Economic Support Fund"; P.L. 110-252, Section 1417.

<sup>48</sup> Adam Graham-Silverman, "Bid to Ease Conditions on Aid to Palestinians Faces Tough Scrutiny," *CQToday*, April 17, 2009.

<sup>49</sup> For example, the proposed supplemental provision does not expressly refer to Section 620K(b)(2) of the Foreign Assistance Act of 1961, as amended by P.L. 109-446 (pertaining to progress on issues including but not limited to counter-terrorism and institutional reform). Rep. Ileana Ros-Lehtinen has stated that the proposed provision appears "to ignore requirements for the dismantling of the Islamist militant infrastructure and the halting of incitement before the P.A.—before a P.A. effectively controlled by Hamas could be eligible for U.S. funds." See Transcript of House Committee on Foreign Affairs hearing: "New Beginnings: Foreign Policy Priorities in the Obama Administration," April 22, 2009.

<sup>49</sup> Adam Graham-Silverman, "Bid to Ease Conditions on Aid to Palestinians Faces Tough Scrutiny," *CQToday*, April 17, 2009.

<sup>50</sup> See P.L. 111-32, Section 1107; P.L. 109-446, Section 2(b)(2).

this is a critically important time in the Middle East, and we don't know what will come from these ongoing [Palestinian unity] talks in Cairo. But if what emerges from these talks is a unity government that abides by the Quartet principles, we do want to have the authority to deal with that government in the peace process or negotiations that might possibly develop. Before providing any such waiver, the administration will consider all the relevant facts, including who these people were, what their role in the government was, to make sure this meets our standards and our national interest.<sup>51</sup>

One week later, at an April 30 Senate Appropriations Committee hearing on the FY2009 supplemental request, Secretary Clinton defined the Administration's view regarding which parties within a potential PA unity government might need to commit to the Quartet principles for the government to be eligible for U.S. funding:

What we have said is that if there were to be, which at this moment seems highly unlikely, a unity government that consisted of the Palestinian Authority members from Fatah and any members from Hamas, the government itself, plus every member of the government, would have to commit to the [Q]uartet principles. Namely, they must renounce violence, they must recognize Israel, and they must agree to abide by the former PLO and Palestinian Authority agreements.<sup>52</sup>

It is unclear to what extent this statement reflects the Obama Administration's *legal* interpretation of the potential meaning of the provision on power sharing in P.L. 111-32, and to what extent it reflects the Administration's *policy* view regarding the circumstances that might justify a presidential waiver and/or certification to authorize direct assistance to a potential unity government.

To defend the hypothetical notion of tolerating the possibility of Hamas members serving in a PA government that would accept the Quartet conditions and/or the Section 620K conditions, Clinton pointed out at the April 23 hearing that "we are currently funding the Lebanese government, which has Hezbollah in it" because of a U.S. interest in supporting a government working to prevent the "further incursion of extremism."<sup>53</sup> She also drew comparisons between the Israeli-Palestinian peace process and the peace process in Northern Ireland during the 1990s (with which she was acquainted as First Lady).

## **International Pledges and the Gaza Reconstruction Effort**

According to the State Department, total pledges of over \$4.6 billion (including the U.S. pledge of \$900 million) were made at the March 2 conference in Egypt. Notable pledges are set forth below in **Table 5**.

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<sup>51</sup> Transcript of House Appropriations Subcommittee on State, Foreign Operations and Related Programs hearing: "Supplemental Request," April 23, 2009.

<sup>52</sup> Transcript of Senate Appropriations Committee hearing: "FY2009 Supplemental," April 30, 2009.

<sup>53</sup> Transcript of House Appropriations Subcommittee on State, Foreign Operations and Related Programs hearing: "Supplemental Request," April 23, 2009.

**Table 5. Notable Pledges of Assistance from March 2 Conference in Egypt**  
(in \$ millions)

| Donor                | Amount  | Donor                    | Amount         |
|----------------------|---------|--------------------------|----------------|
| United States        | 900.0   | Org. of Islamic Conf.    | 100.0          |
| European Commission  | 554.4   | Arab Monetary Fund       | 10.0           |
| 24 EU Member States  | 854.7   | OPEC Fund for Int'l Dev. | 5.5            |
| Saudi Arabia         | 1,000.0 | World Bank               | 55.0           |
| Qatar                | 250.0   | Japan                    | 200.0          |
| Kuwait               | 200.0   | South Korea              | 15.0           |
| United Arab Emirates | 174.0   | Australia                | 12.9           |
| Bahrain              | 23.0    | Brazil                   | 10.0           |
| Algeria              | 200.0   | China                    | 2.2            |
| Morocco              | 15.0    | Singapore                | 1.0            |
| Tunisia              | 1.3     | India                    | 1.0            |
| Lebanon              | 1.0     | Malaysia                 | 0.1            |
| Turkey               | 93.0    | <b>TOTAL</b>             | <b>4,679.1</b> |

**Source:** U.S. Department of State

**Notes:** All amounts are approximate.

Questions abound regarding the pledges. To what extent will they be fulfilled—and when, where, to whom, and how? To what extent might donor assistance be used for actual bricks-and-mortar reconstruction in Gaza? Some donors have reportedly discussed using international organizations or multilateral mechanisms as an alternative to routing Gaza reconstruction assistance through the Palestinian Authority.<sup>54</sup> Even if the funding question is addressed, a remaining obstacle to reconstruction is the Israeli government's refusal to allow more than a minimal amount of construction materials to pass through the Gaza border crossings it controls.

The PA's goal is to raise \$2.8 billion, including \$1.3 billion in Gaza reconstruction assistance.<sup>55</sup> Given its lack of control over Gaza, the PA has proposed using banks in Gaza and NGOs such as CHF International (Cooperative Housing Foundation) to implement reconstruction, but its main accomplishment to date has been to distribute \$20 million through the United Nations Development Programme (UNDP) in emergency cash assistance to families whose homes were

<sup>54</sup> In February, Qatar announced a donation of \$30 million and, in March, Saudi Arabia announced a donation of \$20.5 million to various U.N. agencies to address post-conflict humanitarian needs, but little, if any, of those amounts appeared to be slated for reconstruction assistance. See "Qatar Gives \$40 Million, Mostly Targeted at Gaza, to Boost UN Humanitarian Relief," UN News Centre, February 23, 2009; "Riyadh Pledges \$20.5 Million in Relief Funds to Palestinians," *The Daily Star Online* (Beirut), March 24, 2009, Open Source Document GMP20090324966010. It is unclear whether this approach to post-conflict recovery in Gaza will be the rule or the exception in how the Gulf states fulfill the larger balance of their pledges. In March, Qatar Charity announced a \$10 million donation to the Norwegian Refugee Council for a two-year Gaza reconstruction plan—focused on both the public sector (i.e., health, education, infrastructure) and the private sector (up to 300 homes)—without specifying how construction would proceed despite the embargo on construction materials. See Magnus Wright Jacobsen, "Joint Project for Reconstruction," Norwegian Refugee Council, March 5, 2009, available at <http://www.nrc.no/?did=9386821>.

<sup>55</sup> Alaa Shahine and Alastair Sharp, "Factbox: Pledges Made Ahead of Gaza Conference in Egypt," *Reuters*, March 2, 2009.

destroyed or damaged.<sup>56</sup> To the extent that the PA is unable to meet its reconstruction goals, there are concerns that Hamas and Iran might try to fill the void of reconstruction assistance (despite the Israeli embargo on construction materials) and strengthen their support base among the Gazan population. Hamas has reportedly handed out as much as \$60 million to families who lost homes, businesses, or family members during the conflict,<sup>57</sup> and, according to a *Bloomberg* report, Iran has established a “Gaza Reconstruction Headquarters” in Tehran that it claims will build 1,000 homes, 10 schools, five mosques and 500 shops.<sup>58</sup> Time will likely tell whether the proposed reconstruction plans of the PA, Hamas, Iran, and Gulf Arab states might actually materialize or merely result in a domestic and regional competition for patronage through cash handouts and public relations.<sup>59</sup>

## Proposed FY2010 Appropriations

The current versions of both H.R. 3081, which has been passed by the House, and S. 1434 would (if enacted) appear to fully implement the Obama Administration’s request of \$400.4 in ESF assistance to forward goals similar to those stated for FY2009 supplemental appropriations (West Bank reform and civil society and economic development, and Gaza humanitarian assistance and development).<sup>60</sup> Both bills also contemplate appropriating \$100 million in INCLE funding toward assistance for PA security forces (see “U.S. Security Assistance to the Palestinian Authority”).<sup>61</sup>

## Factors in Determining Future Aid

### Effectiveness of U.S. Assistance in Strengthening the PA in the West Bank

Instability in the Palestinian territories is, paradoxically, both a major reason for the increases in U.S. assistance over the past two 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 is 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

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<sup>56</sup> International Crisis Group, *Gaza’s Unfinished Business*, Middle East Report No. 85, April 23, 2009.

<sup>57</sup> *Ibid.*

<sup>58</sup> See “Middle East: Gaza Ceasefire Faces Poor Prospects,” *Oxford Analytica*, February 6, 2009; David Rosenberg and Saud Abu Ramadan, “Gaza Rebuild Splits Palestinians as Iran, U.S. Clash,” *Bloomberg*, March 2, 2009.

<sup>59</sup> The International Crisis Group has quoted a European diplomat as saying, “The way it looks now, the most likely outcome is that, as in previous crises, recovery simply won’t occur.” International Crisis Group, *Gaza’s Unfinished Business*, Middle East Report No. 85, April 23, 2009, footnote 272.

<sup>60</sup> U.S. Department of State, Summary and Highlights, International Affairs Function 150, Fiscal Year 2010 Budget Request, p. 20.

<sup>61</sup> *Ibid.*, p. 27.

leading some Palestinians to conclude that the PA is too beholden to the United States.<sup>62</sup> This debate has intensified and has become more complicated in the wake of the 2008-2009 Gaza conflict, as questions have been raised about how to undertake the task of post-conflict reconstruction with a Hamas “government” in control of Gaza.

## 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 produced a Palestinian Reform and Development Plan for 2008-2010 (PRDP) that—even before the March 2009 donors’ conference in Sharm al-Sheikh, Egypt—helped garner major international donor assistance pledges and promises of investment, respectively, at conferences in Paris (December 2007) and in Bethlehem and Nablus (May and November 2008) that Quartet envoy and former British prime minister Tony Blair helped organize. International pledges of support, however, have proven insufficient to cover the PA’s monthly budgetary expenses, occasionally requiring last-minute efforts by Fayyad and Blair to obtain outside assistance. Concerns over meeting expenses appear likely to continue unless the March 2009 pledges in Egypt result in substantially heightened contributions to the PA treasury.<sup>63</sup> The ultimate success of Fayyad’s PRDP appears to hinge on two factors: keeping the public sector solvent enough to sustain long-term private sector development, and getting Israeli restrictions loosened or lifted on the movement of goods and people both within and out of the West Bank and Gaza.<sup>64</sup>

## Hamas and a “Unity Government”?

If efforts at unifying Palestinians in the West Bank and Gaza under President Abbas’s leadership—either through elections or political achievements that increase his legitimacy—appear unlikely to succeed, cohesion might be promoted through a consensus or unity PA government that is acceptable to both Abbas’s Fatah faction and Hamas. Egyptian-facilitated efforts to reach agreement on such a government—which remain ongoing—have been unsuccessful since the collapse of the last one following Hamas’s takeover of Gaza in June 2007. Reportedly, the unity negotiations have been complicated by differing factional views on various

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<sup>62</sup> 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.

<sup>63</sup> In a July 9, 2009 briefing with congressional staffers, State Department officials estimated that currently-planned donor assistance to the PA for 2009 will fall short of the PA’s budgetary needs by nearly \$400 million. A July 2008 *Washington Post* article stated that many Arab governments had fulfilled only a small percentage of their pledges to the PA since 2002, and, as a group, had conspicuously decreased donations since Fayyad’s government was installed in June 2007 (although some have since made additional donations). See Glenn Kessler, “Arab Aid to Palestinians Often Doesn’t Fulfill Pledges,” *Washington Post*, July 27, 2008.

<sup>64</sup> See The World Bank, *Implementing the Palestinian Reform and Development Agenda: Economic Monitoring Report to the Ad Hoc Liaison Committee*, May 2, 2008; International Crisis Group, *Ruling Palestine II: The West Bank Model?* Middle East Report no. 79, July 17, 2008. Restrictions on movement have been a key factor in the Palestinian economic downturn since the second Palestinian *intifada* (which began in late 2000), and the closure of Gaza crossings following the Hamas takeover in June 2007 has led to a near economic standstill there. 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.

questions. These questions include how to integrate PA and Hamas security operations, when and how to conduct Palestinian presidential and legislative elections (which, under current Palestinian law, are scheduled to take place no later than January 2010), and whom to appoint to government positions.<sup>65</sup> A consensus or unity government may or may not significantly depart from the development and reform objectives set by the Fayyad government that are used as a major justification for current U.S. aid levels. The continuation of U.S.-sponsored PA security reform efforts (see “U.S. Security Assistance to the Palestinian Authority” above), which are aimed at consolidating all Palestinian forces under a single, civilian-led chain of command, could be particularly difficult for Hamas and its militia to accept.

Regardless of the objectives of a consensus or unity PA government, were it to include Hamas without the acceptance of the Section 620K principles by all of the government’s ministers (recognition of “the Jewish state of Israel’s right to exist” and acceptance of previous Israeli-Palestinian agreements), current law would require the United States to cease direct aid to the PA (see “Hamas’s Role in a “Unity Government”—Different Approach to Aid Conditions?” above),<sup>66</sup> and there could be calls for cessation or for limits on other economic assistance to the West Bank and Gaza. Future debates might focus on whether to relax or to tighten these restrictions, on which Palestinian party/ies should be answerable for accepting and complying with the Section 620K conditions, and on whether the President might be granted discretion to waive aid restrictions relating to a unity government under certain conditions and/or for specific purposes. For discussion of the proposals for FY2009 supplemental appropriations legislation possibly pertaining to these issues, see “Hamas’s Role in a “Unity Government”—Different Approach to Aid Conditions?” above.

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.<sup>67</sup>

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<sup>65</sup> Various proposals regarding government composition include a government composed fully of independent “technocrats,” one with formally non-aligned technocrats who have various factional leanings, and one with actual Fatah and Hamas members.

<sup>66</sup> See P.L. 111-32, Sec. 1107. See also Palestinian Anti-Terrorism Act of 2006 (P.L. 109-446).

<sup>67</sup> 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 the Europeans might be less willing to follow the U.S. lead in the event that another PA government including Hamas is formed. The March 2009 decision by the United Kingdom to reestablish contact with political representatives of Hezbollah has led some U.S. observers to wonder if the United Kingdom and some other European countries might consider a similar move with respect to Hamas, although the UK’s minister of state for the region has said that Hamas would need to make “tangible moves ... particularly the rejection of violence” for the British to make such a move. “British Official Calls on Hamas to Reject Violence,” *Agence France Presse*, April 1, 2009. Additionally, the UK newspaper *The Independent* reported in February 2009 that since the end of 2008, legislators from the United Kingdom, France, the Netherlands, Sweden, and three other Western European nations had consulted with Hamas representatives, despite the official Quartet policy against such contacts. The article quotes a senior European diplomat as saying, “Far more people are talking to Hamas than anyone might think. It is the beginning of something new—although we are not negotiating.” Anne Penketh, “Europe Opens Covert Talks with ‘Blacklisted’ Hamas,” *The Independent* (UK), February 19, 2009. For further discussion of possible policy responses to a PA government that includes Hamas, see the section entitled “The Role of Hamas” in CRS Report R40092, *Israel and the Palestinians: Prospects for a Two-State Solution*, by Jim Zanotti.

## 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 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. The Obama Administration has emphasized the United States’s continued commitment to a two-state solution, and has appointed former Senator George Mitchell as its Special Envoy for Middle East Peace.

Nevertheless, many factors may complicate prospects for a negotiated two-state solution in the near term. One is discord within and among Palestinian factions—reflected geographically by divided rule in the West Bank and Gaza. Another is the April 2009 accession of a right-wing Israeli government under Prime Minister Benjamin Netanyahu that has attached provisos—such as demilitarization—to any consideration on its part of the concept of an independent Palestinian state. Yet another is the 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. A fourth is the possibility of unpredictable events—such as a major terrorist attack, a surprise election outcome, or an outbreak of war—occurring in the Palestinian territories, Israel, or elsewhere in the region.<sup>68</sup>

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<sup>68</sup> For further discussion of this issue, see CRS Report R40092, *Israel and the Palestinians: Prospects for a Two-State Solution*, by Jim Zanotti.