



## Congressional Update The Relationship between Israel and the Palestinians

By Roxanne Perugino  
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On June 14 the Senate passed the **National Defense Authorization Act, S2943**, by a vote of 85-13. The vote occurred after a compromise manager's amendment by Senator John McCain (R-Arizona) fell apart. McCain excoriated senators ahead of the vote as senators repeatedly blocked other senators from offering their amendments, including an amendment on the relationship between Israel and the Palestinians.

The amendment process on the bill came to a halt late earlier this week, with both McCain and Senator Lindsay Graham (R-South Carolina) blaming Mike Lee (R-Utah) for refusing to let any other amendments get a vote unless he got a separate vote on his proposal to ban detaining US citizens on US soil.

***Relationship between Israel and the Palestinians*** -- On June 8, Senator John Barrasso (R-Wyoming) and 19 Republican cosponsors submitted an amendment to be offered concerning Israel and the Palestinians. The amendment offered a new section with an extensive list of findings describing Palestinian efforts to seek legitimacy at the UN. The findings section also cited US law requiring de-funding of any UN body that admits the Palestinians as a state. The amendment contained a Sense of Congress provision calling on the US to de-fund all international climate change programs, following the Palestinian joining of the United Nations Framework Convention on Climate Change (UNFCCC).

**Although the amendment was not offered to the FY 2017 Defense Authorization bill, it bears careful watching.** The Senate has yet to take up the FY 2017 Defense *Appropriations* bill, which is pending on the Senate calendar. It is possible that Barrasso could try to offer his amendment to this bill.<sup>1</sup>

Co-sponsors to the amendment are Senators Roy Blunt (R-Missouri), John Boozman (R-Arkansas), Shelly Moore Capito (R-West Virginia), Tom Cotton (R-Arkansas), Ted Cruz (R-Texas), Steve Daines (R-Montana), Mike Enzi (R-Wyoming), James Inhofe (R-Oklahoma), Johnny Isakson (R-Georgia), James Lankford (R-Oklahoma), Pat Roberts (R-Kansas), Mike Rounds (R-South Dakota), Marco Rubio (R-Florida), Thom Tillis (R-North Carolina), David Vitter (R-Louisiana), Roger Wicker (R-Mississippi), Mike Lee (R-Utah), John Cornyn (R-Texas), and Orrin Hatch (R-Utah).

The Obama Administration has asserted that those provisions do not apply to the UNFCCC because, according to State Department spokesman John Kirby, "the UNFCC is a treaty, and the

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<sup>1</sup> The Defense Authorization bills set the funding levels and policy language. The Defense Appropriation bill actually appropriates the funding levels for specific programs.



Palestinians' purported access does not involved their becoming a member of any specialized UN agency or, indeed, any international organization."

Not surprisingly, when it comes to the Palestinians and UN, Congress disagrees with the President's assessment, arguing that the UNFCCC is not a treaty and that the operating entities of the UNFCCC constitute an "affiliated organization of the United Nations" in that the UNFCCC Secretariat is connected and linked to the UN in many ways.

The President's argument that the UNFCCC is a treaty would appear valid. With 197 parties, the UNFCC has near universal membership and is the parent treaty of the 1997 Kyoto Protocol, which was ratified by 192 of the UNFCC parties. Nevertheless, the legislative track record indicates strong congressional opposition to any effort by the Palestinians to join the UN or any specialized agencies. For example, Palestinian membership in UNESCO caused Congress to cut off funding for that UN agency in 2011. In 2015 the US was re-elected to the executive board of UNESCO despite having withheld funds from the organization for four years. Secretary of State John Kerry reiterated his determination to get Congress to relent and restore funding. Since 2015 the Administration has been waging a quiet campaign in Congress to restore funding.

The text of the amendment as prepared for the Defense Authorization Act follows:

At the end of subtitle H of title XII, add the following new section:

**SEC. 1277. SENSE OF CONGRESS ON RELATIONSHIP BETWEEN ISRAEL AND THE PALESTINIANS.**

(a) *Findings.*--Congress makes the following findings:

(1) The United States Government has a longstanding position that a peaceful resolution of the conflict between Israel and the Palestinians can only be achieved through direct negotiations between the two parties.

(2) The Palestinians have been pursuing a strategy to seek recognition of a Palestinian state through the United Nations, the United Nations specialized agencies, and the United Nations affiliated organizations.

(3) On March 17, 2016, the "State of Palestine" became a party to the United Nations Framework Convention on Climate Change (UNFCCC) as its 197th member.

(4) Section 414 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Public Law 101-246; 22 U.S.C. 287e note) states the following: "No funds authorized to be appropriated by this Act or any other Act shall be available for the United Nations or any specialized agency thereof which accords the Palestine Liberation Organization the same standing as member states."

(5) Section 410 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236; 22 U.S.C. 287e note) states the following: "The United States shall not make any voluntary or assessed contribution: (1) to any affiliated organization of the United Nations which



grants full membership as a state to any organization or group that does not have the internationally recognized attributes of statehood, or (2) to the United Nations, if the United Nations grants full membership as a state in the United Nations to any organization or group that does not have the internationally recognized attributes of statehood, during any period in which such membership is effective."

(6) The provisions described in paragraphs (4) and (5) may not be waived.

(7) The administration of President Barack Obama has asserted that those provisions do not apply to the UNFCCC because, according to Department of State spokesman John Kirby, "The UNFCCC is a treaty, and the Palestinians' purported accession does not involve their becoming members of any U.N. specialized agency or, indeed, any international organization."

(8) Treaties can create international organizations, as demonstrated by the case of the Charter of the United Nations, which is a treaty that created the United Nations organization.

(9) Current United States law often treats entities created by international treaties as international organizations, such as the International Organizations Immunity Act (Public Law 79-291), under which the Executive branch has designated the International Boundary and Water Commission of the United States and Mexico, which was created by United States and Mexico international boundary treaties to assist in their implementation.

(10) The UNFCCC established an international organization based in Bonn, Germany that employs approximately 500 people from over 100 countries and has an annual budget in excess of \$60,000,000.

(11) The operating entities of the UNFCCC constitute an "affiliated organization of the United Nations" in that the UNFCCC Secretariat is connected and linked to the United Nations in many ways, including the following:

(A) The United Nations Secretary-General appoints the executive secretary of the UNFCCC secretariat.

(B) At the first Conference of the Parties, the UNFCCC decided that its secretariat "shall be institutionally linked to the United Nations". According to the UNFCCC website, it remains "institutionally linked" today.

(C) The United Nations serves as Depository for the UNFCCC, the Kyoto Protocol, and the Paris Agreement.

(D) The proposed budget of the United Nations for the biennium 2016-2017 supports the UNFCCC.

(E) The United Nations Campus in Bonn, Germany houses the UNFCCC secretariat, which the United Nations lists as one of 18 organizations that represent it and that are part of the "United Nations presence" in Bonn.



(F) The UNFCCC secretariat is subject to United Nations rules and regulations regarding procurement and other matters.

(G) The UNFCCC secretariat supports what it describes as the ``largest annual United Nations conference," which is the Conference of Parties.

(b) *Sense of Congress*.--Congress--

(1) reaffirms its longstanding position that the only true and lasting path to resolving the Israeli-Palestinian conflict is through direct negotiations between Israel and the Palestinians;

(2) reiterates its strong opposition to any attempt to establish or seek recognition of a Palestinian state outside of an agreement negotiated between leaders in Israel and the Palestinians;

(3) strongly opposes the unilateral actions of the Palestinians to seek statehood recognition through the United Nations, United Nations specialized agencies, United Nations affiliated organizations, and United Nations treaties, conventions, and agreements;

(4) calls on the President to hold the Palestinians accountable for their actions to undermine and circumvent the peace process;

(5) strongly supports the prohibition on United States funding going to any United Nations affiliated organization that grants full membership as a state to any organization or group that does not have the internationally recognized attributes of statehood; and

(6) reaffirms that, under United States law, the United States is prohibited from making any disbursements of United States funds to the UNFCCC secretariat, the Green Climate Fund, the Conference of the Parties, and the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol after the ``State of Palestine" was allowed to become a full member of the UNFCCC.