



United States Department of State

Washington, D.C. 20520

April 6, 2022

Case No. FL-2021-00444

Benjamin P. Sisney
American Center for Law and Justice

[REDACTED]
[REDACTED]

Dear Mr. Sisney:

As we noted in our letter dated February 23, 2022, we are processing your request for material under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. The Department of State has identified an additional twenty-three responsive records subject to the FOIA. We have determined three records may be released in full, sixteen records may be released in part, and four records must be withheld in their entirety.

An enclosure explains the FOIA exemptions and other grounds for withholding material. Where we have made redactions, the applicable FOIA exemptions are marked on each record. The records withheld in full are exempt from release pursuant to FOIA Exemptions 5, 6, 5 U.S.C. §§ 552 (b)(5), (b)(6). All non-exempt material that is reasonably segregable from the exempt material has been released and is enclosed.

We will keep you informed as your case progresses. If you have any questions, your attorney may contact Assistant United States Attorney Brenda González Horowitz at Brenda.gonzalez.horowitz@usdoj.gov or (202) 252-2512. Please refer to the case number, FL-2021-00444, and the civil action number, 21-cv-01221-RC, in all correspondence about this case.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne Miller".

Jeanne Miller
Chief, Programs and Policies Division
Office of Information Programs and Services

Enclosures: As stated.

Freedom of Information Act (5 U.S.C. § 552) and Privacy Act (5 U.S.C. § 552a)

FOIA Exemptions

- (b)(1) Information specifically authorized by an executive order to be kept classified in the interest of national defense or foreign policy. Executive Order 13526 includes the following classification categories:
- 1.4(a) Military plans, systems, or operations
 - 1.4(b) Foreign government information
 - 1.4(c) Intelligence activities, sources or methods, or cryptology
 - 1.4(d) Foreign relations or foreign activities of the US, including confidential sources
 - 1.4(e) Scientific, technological, or economic matters relating to national security, including defense against transnational terrorism
 - 1.4(f) U.S. Government programs for safeguarding nuclear materials or facilities
 - 1.4(g) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to US national security, including defense against transnational terrorism
 - 1.4(h) Weapons of mass destruction
- (b)(2) Related solely to the internal personnel rules and practices of an agency
- (b)(3) Specifically exempted from disclosure by statute (other than 5 USC 552), for example:
- | | |
|----------------|---|
| ARMSEXP | Arms Export Control Act, 50a USC 2411(c) |
| CIA PERS/ORG | Central Intelligence Agency Act of 1949, 50 USC 403(g) |
| EXPORT CONTROL | Export Administration Act of 1979, 50 USC App. Sec. 2411(c) |
| FS ACT | Foreign Service Act of 1980, 22 USC 4004 |
| INA | Immigration and Nationality Act, 8 USC 1202(f), Sec. 222(f) |
| IRAN | Iran Claims Settlement Act, Public Law 99-99, Sec. 505 |
- (b)(4) Trade secrets and confidential commercial or financial information
- (b)(5) Interagency or intra-agency communications forming part of the deliberative process, attorney-client privilege, or attorney work product
- (b)(6) Personal privacy information
- (b)(7) Law enforcement information whose disclosure would:
- (A) interfere with enforcement proceedings
 - (B) deprive a person of a fair trial
 - (C) constitute an unwarranted invasion of personal privacy
 - (D) disclose confidential sources
 - (E) disclose investigation techniques
 - (F) endanger life or physical safety of an individual
- (b)(8) Prepared by or for a government agency regulating or supervising financial institutions
- (b)(9) Geological and geophysical information and data, including maps, concerning wells

Other Grounds for Withholding

- NR Material not responsive to a FOIA request excised with the agreement of the requester

Privacy Act Exemptions

- (d)(5) Information compiled in reasonable anticipation of a civil action or proceeding
- (j)(1) Information maintained by the CIA
- (j)(2) Enforcement of criminal law, including efforts to prevent, control, or reduce crime or apprehend criminals, except records of arrest
- (k)(1) Classified pursuant to E.O. 13526 in the interest of national defense or foreign policy
- (k)(2) Investigatory material compiled for law enforcement purposes
- (k)(3) Regarding protective services to the President of the United States or other individual pursuant to Title 18, U.S.C., Section 3056
- (k)(4) Required by statute to be maintained and used solely as statistical records
- (k)(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his identity would be held in confidence
- (k)(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the testing or examination process
- (k)(7) Evaluation material used to determine potential for promotion in the armed services

From: (b)(6)@state.gov>
To: Amr, Hady A (b)(6)@state.gov>
CC: NEA-IPA-DL <NEA-IPA-DL@state.gov>
Subject: RE: Nides Briefing Papers
Date: Tue, 29 Jun 2021 20:40:18 +0000

Hady, I'm reattaching the 3 IPs listed below, and adding 6 more for your clearance, please:

- IP 30 – UNRWA
- IP 31 – Consular Issues
- IP 33 – Search for U.S. Chief of Mission Residence
- IP 34 – CG Jerusalem
- IP 35 – PLO Mission Office in Washington
- IP 36 – ATCA Overview

(b)(6)

Desk Officer (Political) for Israel and Palestinian Affairs
Bureau of Near Eastern Affairs
U.S. Department of State

(b)(6)

Follow NEA on Twitter [@StateDept_NEA](#)



From: (b)(6)
Sent: Tuesday, June 29, 2021 2:20 PM
To: Amr, Hady A (b)(6)
Cc: NEA-IPA-DL <NEA-IPA-DL@state.gov>
Subject: RE: Nides Briefing Papers

(b)(6) three more for you:

- IP 01 – Key Issues Overview
- IP 23 – Impact of COVID-19
- IP 29 – U.S. Assistance for the West Bank and Gaza

(b)(6)

Desk Officer (Political) for Israel and Palestinian Affairs
Bureau of Near Eastern Affairs
U.S. Department of State

(b)(6)

Follow NEA on Twitter [@StateDept_NEA](#)



From: (b)(6)
Sent: Tuesday, June 29, 2021 12:03 PM
To: Amr, Hady A (b)(6)
Cc: NEA-IPA-DL <NEA-IPA-DL@state.gov>
Subject: Nides Briefing Papers


Hady, we only have one paper ready so far, but will get the rest to you as soon as we can:

IP 22 – Country of Origin Marking Requirements

(b)(6)

Desk Officer (Political) for Israel and Palestinian Affairs
Bureau of Near Eastern Affairs
U.S. Department of State

(b)(6)

Follow NEA on Twitter [@StateDept_NEA](#) 



Sender: (b)(6)
Recipient: Amr, Hady A (b)(6)
NEA-IPA-DL <NEA-IPA-DL@state.gov>

(U) IP 29: U.S. ASSISTANCE FOR THE WEST BANK AND GAZA

(U) Since the signing of the Oslo Accords in 1993, the United States has provided over \$6.3 billion in foreign assistance for economic, development, and security sector programs in the West Bank and Gaza (WBG). In addition, the United States has provided over \$1.3 billion in humanitarian assistance for the Palestinian people in WBG. The United States has also provided more than \$4.4 billion in humanitarian assistance through the U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to aid Palestinians in Jordan, Lebanon, Syria, and WBG. On April 7, 2021, Secretary Blinken announced the plan to provide U.S. economic and development, humanitarian, and security assistance for the Palestinians following the Trump Administration's August 2018 decision to end most assistance for the Palestinians.

(U) Current Status of Assistance Program: The United States is in the process of providing more than \$360 million in assistance to the Palestinian people. This includes:

- **May 25, \$113.1 million** for West Bank and Gaza relief and recovery efforts, including nearly \$33 million for UNRWA, \$5.5 million for other humanitarian partners, and, following congressional notification, \$75 million in FY 2021 Economic Support Fund (ESF) for future year programming through the U.S. Agency for International Development (USAID).
- **April 7, \$235 million** to resume assistance for the Palestinians, including \$75 million in FY 2020 ESF and \$10 million in Development Assistance (DA) for USAID reconciliation programs, as well as \$150 million for UNRWA.
- **March 25, \$15 million** in International Disaster Assistance (IDA) for emergency food assistance and COVID-19 response efforts.

(U) Although the specifics were not part of the April 7 announcement, the Administration also announced the restart of security assistance for the Palestinian Authority (PA), initially funded with \$40 million from the International Narcotics Control and Law Enforcement (INCLE) account. For FY 2021 funding, consistent with the table in the Joint Explanatory Statement accompanying the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021 (Div. K, P.L. 116-260) (FY 2021 SFOAA), the Department's annual section 653(a) report includes an allocation of \$75 million in ESF for programs in the WBG, with an additional \$50 million for the Nita M. Lowey Middle East Partnership for Peace Act (MEPPA). MEPPA creates two programs—the People-to-People Partnership for Peace Fund (PPF), managed by USAID, and the Joint Investment for Peace Initiative, managed by the Development Finance Corporation—to support peacebuilding projects that build economic cooperation and people-to-people engagement.

(U) All U.S. assistance programs are funded consistent with applicable U.S. law. The Taylor Force Act (TFA) restricts ESF made available for the West Bank and Gaza that directly benefits the Palestinian Authority (PA) (with certain exceptions) unless the Secretary of State makes a certification to Congress regarding, among other things, steps to end the PA's practice of providing payments to individuals and families of individuals who committed acts of terrorism. Prior to congressional notification of this new assistance addressed above, USAID, in consultation with the Department, conducted a full analysis and assessed that planned economic and development assistance would not "directly benefit" the PA or would fall within an exception in the TFA. Consistent with a report by the Department of State transmitted to Congress on May 3, 2018, the Department takes the following criteria into account in assessing whether assistance "directly benefits" the PA in this context: "The intended primary beneficiary or end user of the assistance; whether the Palestinian Authority is the direct recipient of the assistance; whether the assistance involves the payment of Palestinian

Authority creditors; the extent of ownership or control the Palestinian Authority exerts over an entity or individual that is the primary beneficiary or end user of the assistance; and whether the assistance or services provided directly replace assistance or services provided by the Palestinian Authority.” In addition, the Department and USAID have a robust vetting process in place to mitigate against the risk that funds would flow to unintended recipients.

(U) The assistance noted above for Palestinians would support the following:

- **(U) Economic and Development Assistance:** \$75 million in FY 2020 ESF will, pending congressional approval, among other activities, support small and medium enterprises recovering from the effects of COVID-19; provide opportunities for income generation, including in the tourism industry; support needy households to access basic human needs, such as food and clean water; and support Palestinian civil society. Nearly \$30 million will support Gaza and \$10 million will support the East Jerusalem Hospital Network.
 - **Background:** USAID is the principal U.S. government agency that administers the United States’ economic assistance program in the West Bank and Gaza. This assistance totals nearly \$5 billion since 1994, and programs have improved the provision of public services; improved the functioning of local governance; alleviated humanitarian suffering; increased economic opportunities; and supported civil society and youth. USAID and State programs implemented by the Middle East Partnership Initiative, Middle East Multilaterals, Middle East Regional Cooperation Program, and the Bureau of Democracy, Human Rights, and Labor have supported scientific exchanges, students, academic exchange, civic education, human rights, and leadership advancement.
- **(U) Security Assistance:** \$40 million in FY 2016/2021 and FY 2017/2022 INCLE funding will be used to support strengthening

Palestinian Authority security forces capable of, and willing to, partner with Israel to prevent and address regional instability.

- **Background:** Since 2007, the United States has provided \$975 million in INCLE-funded security and rule of law assistance to reform and professionalize the Palestinian Authority Security Forces, in coordination with the U.S. Security Coordinator. In addition, since 2011, the United States has invested over \$6 million in humanitarian mine action programs in the West Bank and Gaza that focus on the clearance of landmines and unexploded ordnance from undisputed, privately-owned land that both Israeli and Palestinian officials agree upon. These programs are implemented by international non-governmental organizations and are managed by the Bureau of Political-Military Affairs' Office of Weapons Removal and Abatement.
- **(U) Humanitarian Assistance to UNRWA:** To date in FY 2021, PRM has contributed nearly \$183 million to UNRWA to provide humanitarian assistance to its beneficiaries in Jordan, Lebanon, Syria, and WBG, including to respond to COVID-19.
 - **Background:** Since 1993, the United States has provided over \$1.3 billion in humanitarian support for the Palestinian people in the West Bank and Gaza, to include funding that supports UNRWA's West Bank and Gaza Emergency Appeal. UNRWA's services include education, health care, emergency relief, social services, mental health and psychosocial support, and livelihoods assistance, among other activities.
- **(U) USAID Humanitarian Assistance:** To date in FY 2021, USAID has contributed \$20.5 million in humanitarian assistance to reach vulnerable communities in the West Bank and Gaza impacted by ongoing food insecurity, COVID-19, and the recent conflict in Gaza.

(U) Hard Q&A/Talking Points

(U) Q: What does assistance to the Palestinians do? Are we complying with U.S. law?

(b)(5)

(U) Q: Do you support the Nita M. Lowey Middle East Partnership for Peace Act?

(b)(5)

Approved: NEA – Karen H. Sasahara, SBO ()

Drafted: NEA/IPA – (b)(6) and cell: (b)(6)
(b)(6)

Cleared:

NEA/FO: CHodges

NEA/FO: HAmr

Jerusalem: (b)(6)

D: (b)(6)

D-MR: (b)(6)

P: (b)(6)

S/P: (b)(6)

C: (b)(6)

H: (b)(6)

L/LFA: (b)(6)

L/AN: (b)(6)

PRM: (b)(6)

USAID/ME: (b)(6)

USAID/BHA: (b)(6)

F: (b)(6)

INL: (b)(6)

PM/WRA: (b)(6)

OK
No response
No response
OK
Info by request
OK

OK
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OK

(U) IP 35: GENERAL DELEGATION OF THE PALESTINE LIBERATION ORGANIZATION OFFICE (“PLO Office”) IN WASHINGTON, D.C.

(U) The Palestine Liberation Organization (PLO) operated an office in Washington D.C. beginning in 1994, as described below. On July 20, 2010, the Department of State agreed to upgrade the status of the PLO office in the United States to “General Delegation of the PLO.”

(U) The Antiterrorism Act of 1987 (ATA) has long restricted the operation and maintenance of a General Delegation of the PLO Office in Washington. To permit the PLO Office to open in 1994, President Clinton exercised an authority to waive restrictions on PLO activities in the United States under the ATA. The Department also designated the PLO Office in Washington as a foreign mission, facilitating Department regulation of the office. Permitting the PLO to operate the Washington office was intended to facilitate U.S. engagement with the PLO, which was recognized in the Oslo Accords in 1993 as the sole legitimate representative of the Palestinian people for the conduct of negotiations and foreign relations. The PLO Office’s operations were subsequently maintained by a series of waivers (in recent years authorized in appropriations acts). The authority to make the waiver certifications was delegated to the Secretary of State from the President.

(U) In 2017, Secretary of State Tillerson did not make the required waiver certifications, including that the Palestinians had not initiated or actively supported an International Criminal Court investigation against Israeli nationals for alleged crimes against Palestinians. While the PLO Office conducted limited activities pursuant to Department guidance for some months, on September 10, 2018, the Department announced the closure of the PLO Office in Washington. The Department explained that it had concluded that the PLO had not taken steps to engage in direct and meaningful negotiations with Israel. As such, and reflecting Congressional concerns, the Department decided to require the closure of the PLO Office in Washington.

(U) The Palestinian Authority (PA) has expressed strong interest in reopening the PLO Office in Washington, D.C. If there is a policy decision by the Administration to support the reestablishment of the PLO Office, the Administration will need to waive or address restrictions under the Antiterrorism Act of 1987. The PA/PLO will also need to take steps to address litigation risk stemming from the Anti-Terrorism Clarification Act (ATCA) as amended by the Promoting Security and Justice for Victims of Terrorism Act of 2019 (PSJVTA), which provides for deemed personal jurisdiction in U.S. courts over the PA/PLO for certain terrorism-related offenses, if factual predicates are met (including with respect to maintaining an office in the United States).

(U) Hard Q&A/Talking Points

(U) Q: What is the status of the PLO office in DC?

(b)(5)

Approved: NEA – Karen H. Sasahara, SBO ()

Drafted: NEA/IPA – (b)(6) and cell: (b)(6)
(b)(6)

Cleared:

NEA/FO: CHodges

NEA/FO: HAmr

NEA/IPA: (b)(6) OK

NEA/SCA-EX: (b)(6) OK

H: (b)(6)

L/AN: (b)(6) OK

L/DL: OK

L/LFA: OK

OFM: OK

D: (b)(6) OK

D-MR: (b)(6) OK

P: (b)(6) OK

S/P: (b)(6) Info by request

C: No response

(U) IP 30: UNITED NATIONS RELIEF AND WORK AGENCY FOR PALESTINE REFUGEES (UNRWA)

(U) Established in 1949 before the creation of the United Nations High Commissioner for Refugees (UNHCR) or the 1951 Refugee Convention, UNRWA has the sole UN mandate to provide health, education, and relief assistance for Palestinian refugees in Jordan, Lebanon, Syria, and the West Bank and Gaza. UNRWA is an indispensable counterweight to extremism in the region, providing education, health and social services, and humanitarian relief in a manner consistent with the UN humanitarian principles of neutrality, humanity, independence, and impartiality. Not all registered refugees access UNRWA's services but do so as needed.

(U) Education: Education programs account for more than half of UNRWA's regular budget. UNRWA provides education for more than 530,000 children, including 282,000 in Gaza alone, where the Agency serves as a powerful counterweight to Hamas. In the absence of UNRWA, many of these children would be unable to attend school or would be forced to attend schools under the influence of extremist groups. Like other UN agencies, UNRWA uses host government textbooks. Evidence from Jordan, the West Bank, and Gaza shows that the quality of UNRWA education surpasses public education. With U.S. support, UNRWA teaches human rights education in its schools to supplement host government materials. In Gaza, UNRWA students utilize a dedicated human rights curriculum anchored in the Universal Declaration of Human Rights. Gaza's weekly human rights classes — which have drawn protests from Hamas — ensure children learn about their fundamental human rights and the historical context that gave rise to the Universal Declaration. In 2013, UNRWA introduced a Curriculum Framework to enable UNRWA educators to use consistent criteria in analyzing and enriching host country curricula and textbooks. The Framework helps ensure that all materials used in UNRWA classrooms reflect UN values and principles, which firmly reject anti-Semitism, violence, and incitement to violence. In April 2021, UNRWA

launched a new centralized online learning platform as a tool to systematically triple-review educational content while ensuring the continued education of children during the pandemic. The content is now publicly available on UNRWA's website (keeplearning.unrwa.org).

(U) Health: UNRWA health facilities conduct approximately 8.7 million patient visits for basic primary healthcare in over 140 primary health facilities per year. Health care visits include providing immunizations, check-ups, pre-natal and post-natal care, clean water, mental health assistance, and, developed with targeted U.S. funding, a gender-based violence education and referral program. UNRWA's primary health clinics remained open throughout the pandemic, triaging patients, referring COVID-19 patients to local hospitals, delivering medicine to refugees at their homes, and conducting home health visits.

(U) Humanitarian Relief: In times of conflict, UNRWA provides vital humanitarian relief to Palestinian refugees. In Syria, UNRWA assistance ensures that 136,000 of the most vulnerable refugees receive food assistance. In response to the COVID-19 pandemic, UNRWA rapidly adapted services and implemented COVID-19 emergency activities, targeting those most at risk and impacted by the pandemic and movement restrictions. Across its fields of operations, UNRWA instituted home deliveries of food assistance, one-off cash grants, support to survivors of gender-based violence, dedicated support to refugees with disabilities, and remote psychosocial support. In Gaza, where years of on-and-off conflict and economic restrictions and decline have left 80 percent of the population dependent on international aid, UNRWA provides food assistance to over one million registered refugees.

(U) UNRWA's Mandate: Following the 1948 Arab-Israeli conflict, and in the absence of the creation of the Palestinian state envisioned by the United States and the United Nations, UNRWA was established by a UN General Assembly resolution to carry out direct relief and works programs for Palestinian refugees. The General Assembly has

repeatedly renewed UNRWA's mandate, most recently extending it until June 30, 2023. Like UNHCR, UNRWA provides its humanitarian services to the descendants of refugees until a durable solution is agreed; for example, this approach is also used by UNHCR with Burmese refugees in Thailand, Somali refugees in Kenya, and Afghan refugees in Pakistan.

(U) Safeguards: Through funding of and partnership with UNRWA, the United States can help ensure the Agency adheres to critical safeguards on transparency, accountability, and neutrality. UNRWA has policies in place to maintain the neutrality of staff and operations and prevent UNRWA funds and programs from benefiting terrorists, as required by Section 301(c) of the 1961 Foreign Assistance Act, as amended. Vetting of UNRWA staff, beneficiaries, and other persons receiving UNRWA payments is a key component of these policies and procedures. As of 2014, any third party requesting to use UNRWA facilities is also subject to vetting. UNRWA also checks its suppliers against UN Suspect Vendor reports. UNRWA's staff lists are shared annually with host governments and Israel and are provided to other UN member states upon request. UNRWA responds swiftly upon receipt of credible information about staff or beneficiaries who have allegedly engaged in illicit or inappropriate activities that violate UNRWA's neutrality policies. UNRWA immediately launches an investigation and, if warranted, terminates employment or contracts, or denies benefits to affected beneficiaries.

(U) Funding: UNRWA relies almost exclusively on voluntary donor contributions to implement its programs (only international staff salaries are paid from the assessed UN budget, more than \$33.4 million per year). Over a number of years, UNRWA has dealt with chronic budget shortfalls. Donor contributions have not kept pace with annual cost increases, resulting largely from population growth among refugees waiting for a political resolution to their situation. The U.S. Government provided \$364 million to UNRWA in 2017 and \$60 million in 2018. Thus far in FY 2021, the U.S. Government has provided over

\$180 million to UNRWA's operations. The United States and other donors continue to work with UNRWA to improve the sustainability of its operations and encourage UNRWA to expand its outreach to new and non-traditional donors, especially among members of the Arab League.

(U) Hard Q&A/Talking Points

(U) Q: The Administration has announced a resumption of funding to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) without securing any reforms. How is this effective?

(b)(5)

Approved: PRM – Nancy I. Jackson, SBO (NIJ)
NEA – Karen H. Sasahara, SBO ()

Drafted: PRM/ANE – (b)(6) and cell: (b)(6)
(b)(6)

Cleared:

NEA/FO: CHodges

NEA/FO: HAmr

PRM/FO: RAlbright

OK

PRM/ANE: (b)(6)

OK

USUN/W: (b)(6)

OK

USUN/NY: (b)(6)

OK

USUN/NY: (b)(6)

OK

USUN/NY: (b)(6)

OK

NEA/IPA: (b)(6)

OK

PRM/Jerusalem: (b)(6)

OK

H: (b)(6)

Withheld pursuant to exemption

(b)(5)

UNCLASSIFIED

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(U) The **Antiterrorism Act of 1987 (ATA)** has long restricted the operation and maintenance of a General Delegation of the PLO Office in Washington, D.C.. To permit the PLO Office to open in 1994, President Clinton exercised his authority to waive restrictions on PLO activities in the United States under the ATA. The State Department also designated the PLO Office in Washington as a foreign mission, facilitating State Department regulation of the office. Permitting the PLO to operate the Washington, D.C. office was intended to facilitate U.S. engagement with the PLO, which was recognized in the Oslo Accords in 1993 as the sole legitimate representative of the Palestinian people for the conduct of negotiations and foreign relations. The PLO Office’s operations were subsequently maintained by a series of waivers (in recent years authorized in appropriations acts). The authority to make the waiver certifications was delegated to the Secretary of State from the President.

(U) In 2017, Secretary of State Tillerson elected not to make the required waiver certifications, including one that the Palestinians had not initiated or actively supported an International Criminal Court investigation against Israeli nationals for alleged crimes against Palestinians. While the PLO Office continued to conduct limited activities pursuant to Department guidance for some months, on September 10, 2018, the State Department announced the closure of the PLO Office. The State Department concluded that the PLO had not taken steps to engage in direct and meaningful negotiations with Israel. As such, and reflecting Congressional concerns, the State Department required the closure of the PLO Office.

UNCLASSIFIED

Commented [MT1]: (b)(7)

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(b)(5)

UNCLASSIFIED

(U) Recently the Palestinian Authority (PA) has expressed strong interest in reopening the PLO Office in Washington, D.C. If there is a policy decision by the Administration to support the reestablishment of the PLO Office, the Administration will need to waive or address restrictions under the Antiterrorism Act of 1987. The PA/PLO will also need to take steps to address litigation risk stemming from the Anti-Terrorism Clarification Act (ATCA) as amended by the **Promoting Security and Justice for Victims of Terrorism Act of 2019 (PSJVTA)**, which provides for deemed personal jurisdiction in U.S. courts over the PA/PLO for certain terrorism-related offenses, if factual predicates are met (including with respect to maintaining an office in the United States).

(U) Hard Q&A/Talking Points

(U) Q: What is the status of the PLO office in DC?

(b)(5)

UNCLASSIFIED

UNCLASSIFIED

Approved: NEA – Karen H. Sasahara, SBO ()

Drafted: NEA/IPA – (b)(6) and cell: (b)(6)
(b)(6)

Cleared:

NEA/FO: CHodges	OK
NEA/FO: HAmr	OK
NEA/IPA: (b)(6)	OK
NEA/SCA-EX: (b)(6)	OK
H: (b)(6)	OK
L/AN: (b)(6)	OK
L/DL:	OK
L/LFA: (b)(6)	OK
OFM: (b)(6)	OK
D: (b)(6)	OK
D-MR: (b)(6)	OK
P: (b)(6)	OK
S/P: (b)(6)	Info by request
C: (b)(6)	No response

UNCLASSIFIED

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(U) In 2017, Secretary of State Tillerson did not make the required waiver certifications, including that the Palestinians had not initiated or actively supported an International Criminal Court investigation against Israeli nationals for alleged crimes against Palestinians. While the PLO Office conducted limited activities pursuant to Department guidance for some months, on September 10, 2018, the Department announced the closure of the PLO Office in Washington. The Department explained that it had concluded that the PLO had not taken steps to engage in direct and meaningful negotiations with Israel. As such, and reflecting Congressional concerns, the Department decided to require the closure of the PLO Office in Washington.

(U) The Palestinian Authority (PA) has expressed strong interest in reopening the PLO Office in Washington, D.C. If there is a policy decision by the Administration to support the reestablishment of the PLO Office, the Administration will need to waive or address restrictions under the Antiterrorism Act of 1987. The PA/PLO will also need to take steps to address litigation risk stemming from the Anti-Terrorism Clarification Act (ATCA) as amended by the Promoting Security and Justice for Victims of Terrorism Act of 2019 (PSJVTA), which provides for deemed personal jurisdiction in U.S. courts over the PA/PLO for certain terrorism-related offenses, if factual predicates are met (including with respect to maintaining an office in the United States).

(U) Hard Q&A/Talking Points

(U) Q: What is the status of the PLO office in DC?

(b)(5)

Approved: NEA – Karen H. Sasahara, SBO ()

Drafted: NEA/IPA – (b)(6) and cell: (b)(6)
(b)(6)

Cleared:

NEA/FO: CHodges

NEA/FO: HAmr

NEA/IPA: (b)(6)

OK

NEA/SCA-EX: (b)(6)

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H: (b)(6)

L/AN: (b)(6)

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L/DL:

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OK

S/P: (b)(6)

Info by request

C: (b)(6)

No response

(U) IP 29: U.S. ASSISTANCE FOR THE WEST BANK AND GAZA

(U) Since the signing of the Oslo Accords in 1993, the United States has provided over \$6.3 billion in foreign assistance for economic, development, and security sector programs in the West Bank and Gaza (WBG). In addition, the United States has provided over \$1.3 billion in humanitarian assistance for the Palestinian people in WBG. The United States has also provided more than \$4.4 billion in humanitarian assistance through the U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to aid Palestinians in Jordan, Lebanon, Syria, and WBG. On April 7, 2021, Secretary Blinken announced the plan to provide U.S. economic and development, humanitarian, and security assistance for the Palestinians following the Trump Administration's August 2018 decision to end most assistance for the Palestinians.

(U) Current Status of Assistance Program: The United States is in the process of providing more than \$360 million in assistance to the Palestinian people. This includes:

- **May 25, \$113.1 million** for West Bank and Gaza relief and recovery efforts, including nearly \$33 million for UNRWA, \$5.5 million for other humanitarian partners, and, following congressional notification, \$75 million in FY 2021 Economic Support Fund (ESF) for future year programming through the U.S. Agency for International Development (USAID).
- **April 7, \$235 million** to resume assistance for the Palestinians, including \$75 million in FY 2020 ESF and \$10 million in Development Assistance (DA) for USAID reconciliation programs, as well as \$150 million for UNRWA.
- **March 25, \$15 million** in International Disaster Assistance (IDA) for emergency food assistance and COVID-19 response efforts.

(U) In the April 7 announcement, the Administration also announced the restart of security assistance for the Palestinian Authority (PA), initially funded with \$40 million from the International Narcotics Control and Law Enforcement (INCLE) account. For FY 2021 funding, consistent with the table in the Joint Explanatory Statement accompanying the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021 (Div. K, P.L. 116-260) (FY 2021 SFOAA), the Department's annual section 653(a) report includes an allocation of \$75 million in ESF for programs in WB/G, with an additional \$50 million for the Nita M. Lowey Middle East Partnership for Peace Act (MEPPA). MEPPA creates two programs—the People-to-People Partnership for Peace Fund (PPF), managed by USAID, and the Joint Investment for Peace Initiative, managed by the Development Finance Corporation—to support peacebuilding projects that build economic cooperation and people-to-people engagement.

(U) All U.S. assistance programs are funded consistent with applicable U.S. law. The Taylor Force Act (TFA) restricts ESF made available for the West Bank and Gaza that directly benefits the Palestinian Authority (PA) (with certain exceptions provided for under TFA) unless the Secretary of State makes a certification to Congress regarding, among other things, steps to end the PA's practice of providing payments to individuals and families of individuals who committed acts of terrorism. Prior to congressional notification of this new assistance addressed above, USAID, in consultation with the Department, conducted a full analysis and assessed that planned economic and development assistance would not "directly benefit" the PA or would fall within an exception in the TFA. Consistent with a report by the Department of State transmitted to Congress on May 3, 2018, the Department takes the following criteria into account in assessing whether assistance "directly benefits" the PA in this context: "The intended primary beneficiary or end user of the assistance; whether the Palestinian Authority is the direct recipient of the assistance; whether the assistance involves the payment of Palestinian Authority creditors; the extent of ownership or control the

Palestinian Authority exerts over an entity or individual that is the primary beneficiary or end user of the assistance; and whether the assistance or services provided directly replace assistance or services provided by the Palestinian Authority.” In addition, the Department and USAID have a robust vetting process in place to mitigate against the risk that funds would flow to unintended recipients.

(U) The assistance noted above for Palestinians would support the following:

- **(U) Economic and Development Assistance:** \$75 million in FY 2020 ESF will, pending congressional approval, among other activities, support small and medium enterprises recovering from the effects of COVID-19; provide opportunities for income generation, including in the tourism industry; support needy households to access basic human needs, such as food and clean water; and support Palestinian civil society. Nearly \$30 million will support Gaza and \$10 million will support the East Jerusalem Hospital Network.
 - **Background:** USAID is the principal U.S. government agency that administers the United States’ economic assistance program in the West Bank and Gaza. This assistance totals nearly \$5 billion since 1994, and programs have improved the provision of public services; improved the functioning of local governance; alleviated humanitarian suffering; increased economic opportunities; and supported civil society and youth. USAID and State programs implemented by the Middle East Partnership Initiative, Middle East Multilaterals, Middle East Regional Cooperation Program, and the Bureau of Democracy, Human Rights, and Labor have supported scientific exchanges, students, academic exchange, civic education, human rights, and leadership advancement.
- **(U) Security Assistance:** \$40 million in FY 2016/2021 and FY 2017/2022 INCLE funding will be used to support strengthening

Palestinian Authority security forces capable of, and willing to, partner with Israel to prevent and address regional instability.

- **Background:** Since 2007, the United States has provided \$975 million in INCLE-funded security and rule of law assistance to reform and professionalize the Palestinian Authority Security Forces, in coordination with the U.S. Security Coordinator. In addition, since 2011, the United States has invested over \$6 million in humanitarian mine action programs in the West Bank and Gaza that focus on the clearance of landmines and unexploded ordnance from undisputed, privately-owned land that both Israeli and Palestinian officials agree upon. These programs are implemented by international non-governmental organizations and are managed by the Bureau of Political-Military Affairs' Office of Weapons Removal and Abatement.
- **(U) Humanitarian Assistance to UNRWA:** To date in FY 2021, PRM has contributed nearly \$183 million to UNRWA to provide humanitarian assistance to its beneficiaries in Jordan, Lebanon, Syria, and WB/G, including to respond to COVID-19.
 - **Background:** Since 1993, the United States has provided over \$1.3 billion in humanitarian support for the Palestinian people in the West Bank and Gaza, to include funding that supports UNRWA's West Bank and Gaza Emergency Appeal. UNRWA's services include education, health care, emergency relief, social services, mental health and psychosocial support, and livelihoods assistance, among other activities.
- **(U) USAID Humanitarian Assistance:** To date in FY 2021, USAID has contributed \$20.5 million in humanitarian assistance to reach vulnerable communities in the West Bank and Gaza impacted by ongoing food insecurity, COVID-19, and the recent conflict in Gaza.

(U) Hard Q&A/Talking Points

(U) Q: What does assistance to the Palestinians do? Are we complying with U.S. law?

(b)(5)

(U) Q: Do you support the Nita M. Lowey Middle East Partnership for Peace Act?

(b)(5)

Approved: NEA – Karen H. Sasahara, SBO ()

Drafted: NEA/IPA – (b)(6) and cell: (b)(6)
(b)(6)

Cleared:

NEA/FO: CHodges	OK
NEA/FO: HAmr	OK
Jerusalem: (b)(6)	OK
D: (b)(6)	No response
D-MR: (b)(6)	No response
P: (b)(6)	OK
S/P: (b)(6)	Info by request
C: (b)(6)	OK
H:	
L/LFA: (b)(6)	OK
L/AN:	OK
PRM:	OK
USAID/ME: (b)(6)	OK
USAID/BHA	OK
F: (b)(6)	OK
INL: (b)(6)	OK
PM/WRA: (b)(6)	OK

(U) Legislation Cheatsheet

(U) The **Antiterrorism Act of 1987 (ATA)** has long restricted the operation and maintenance of a General Delegation of the Palestinian Liberation Organization (PLO) Office in Washington, D.C., based on a Congressional finding at the time that the PLO is a terrorist organization. To permit the PLO Office to open in 1994, President Clinton exercised his authority to waive restrictions on PLO activities in the United States under the ATA. The State Department also designated the PLO Office in Washington, D.C. as a foreign mission, facilitating State Department regulation of the office. Permitting the PLO to operate the Washington, D.C. office was intended to facilitate U.S. engagement with the PLO, which was recognized in the Oslo Accords in 1993 as the sole legitimate representative of the Palestinian people for the conduct of negotiations and foreign relations. The PLO Office's operations were subsequently maintained by a series of waivers (in recent years authorized in appropriations acts).

(U) The **Anti-Terrorism Clarification Act (ATCA)** was signed into law in October of 2018. The legislation, which originated in the Senate Judiciary Committee, sought to assist a group of U.S. plaintiffs who had pursued or been awarded judgements by U.S. courts against the PLO and/or Palestinian Authority (PA) for claims filed under the ATA related to acts of terrorism occurring in the West Bank and Israel, largely during the Second Intifada, but had seen those awards reversed or claims dismissed for lack of personal jurisdiction over the PA/PLO. In order to assist these plaintiffs in establishing the jurisdiction of U.S. courts over the PLO and/or PA, ATCA identified a number of actions that, should the PLO and/or PA take or benefit from after January 31, 2019, would be deemed to constitute PLO and/or PA acceptance of such jurisdiction. Among these actions or "jurisdictional triggers" was PLO and/or PA acceptance of U.S. foreign assistance under certain authorities, including Economic Support Funds (ESF), the primary source of U.S. economic assistance in the West Bank and Gaza, as well as International Narcotics Control and Law Enforcement (INCLE) funds, used to provide security

assistance to the PA. The legislation did not define what constituted PA and/or PLO acceptance of such assistance, leaving unclear the circumstances under which a U.S. court would find that the PLO and/or PA had triggered the jurisdictional provision. (For example, it was difficult to predict how a court would view a case where foreign assistance funded a grant to an NGO to provide a service for people in the West Bank with the consent of the PA.) After ATCA was signed into law, and on the advice of its U.S. counsel, the PA informed then-Secretary Pompeo via a letter in December 2018 of its intent to cease accepting U.S. assistance under the authorities specified in ATCA.

(U) The **Promoting Security and Justice for Victims of Terrorism Act (PSJVTA)**, an amendment to ATCA, was signed into law in December of 2019. It substituted other bases for deemed consent related to prisoner and martyr payments and to PA/PLO activities in the United States and removed the jurisdictional provision related to foreign assistance. The Trump Administration chose not to resume assistance. In March 2021, the Biden Administration announced the resumption of assistance to the West Bank and Gaza. In addition to amending the jurisdictional “triggers” included in ATCA to support efforts of U.S. victims and their family members to gain personal jurisdiction in U.S. courts over the PA/PLO in certain terrorism cases, section 903(b) of the PSJVTA also requires the Secretary of State, in consultation with the Attorney General, to develop and initiate a comprehensive process to facilitate the resolution and settlement of certain claims brought by U.S. victims of terrorism against the PA/PLO, including certain claims dismissed on personal jurisdiction grounds.

(U) The **Taylor Force Act (TFA)** which was signed into law in March of 2018, restricts ESF made available for the West Bank and Gaza that directly benefits the Palestinian Authority (PA) (with certain exceptions) unless the Secretary of State makes a certification to Congress regarding, among other things, steps to end the PA’s practice of providing payments to individuals and families of individuals who committed acts of terrorism. Consistent with a report transmitted to

Congress by the Department of State on May 3, 2018, the Department takes the following criteria into account in assessing whether assistance “directly benefits” the PA in this context: “The intended primary beneficiary or end user of the assistance; whether the Palestinian Authority is the direct recipient of the assistance; whether the assistance involves the payment of Palestinian Authority creditors; the extent of ownership or control the Palestinian Authority exerts over an entity or individual that is the primary beneficiary or end user of the assistance; and whether the assistance or services provided directly replace assistance or services provided by the Palestinian Authority.” In addition, the Department and USAID have a robust vetting process in place to mitigate against the risk that funds would flow to unintended recipients.

U.S. Victims of Palestinian Terrorism and the Anti-Terrorism Clarification Act (ATCA)

Q: What will you do to help U.S. victims of Palestinian terrorism? Do you think federal courts are wrong to have dismissed cases for lack of personal jurisdiction? What is your view on the constitutionality of the Anti-Terrorism Clarification Act (ATCA), as amended?

(b)(5)

Context: ATCA, as amended, provides bases for deeming consent to personal jurisdiction in suits brought by victims of terrorism against the Palestine Liberation Organization and Palestinian Authority, following U.S. court decisions rejecting a number of cases for lack of personal jurisdiction. The legislation also directs the Secretary of State, in consultation with the Attorney General, to develop and initiate a comprehensive process for the Department of State to facilitate the resolution and settlements of covered claims. The constitutionality of ATCA's bases for deemed consent has been challenged in the litigation, and the United States has filed briefs defending the constitutionality of the statute in the *Fuld* and *Sokolow* cases.

(b)(5)

Boycott, Divestment, and Sanctions (BDS) of Israel

Q: What will you do to oppose the BDS movement, and actions that facilitate that movements aim's such as the recent decision by Ben & Jerry's to end its licensing agreement and stop the sale of its ice cream in "occupied Palestinian territory" understood to refer to Israeli settlements in the West Bank and East Jerusalem or the database of companies operating in Israeli settlements published by the Office of the United Nations High Commissioner for Human Rights (OHCHR)? What is your view on anti-BDS legislation? Do you believe it implicates First Amendment concerns? Do you understand federal law to prohibit boycotting Israeli settlements?

A:

(b)(5)

Context: On July 19, 2021, the U.S. company Ben & Jerry's stated that it will stop selling its ice cream in "occupied Palestinian territory," understood to refer to Israeli settlements in the West Bank and East Jerusalem. The U.S. company said sales "in the Occupied Palestinian Territory (OPT)" were "inconsistent with our values." Israeli Prime Minister Naftali Bennett said the move was "morally wrong" and would prove to be "financially wrong." Israel's Ambassador to the United States, Gilad Erdan, in a letter reportedly asked 35 states with anti-BDS laws in place to take action against Ben & Jerry's. Some international organizations and States have taken actions that either encourage states to differentiate between Israel and its settlements, or could make it easier for political or economic differentiation to take place: In February 2020, pursuant to a resolution from the UN Human Rights Council, OHCHR published a database of companies engaged in certain activities in Israeli settlements.

(b)(5)

Israeli Settlements

Q: Secretary Pompeo said that Israeli settlements in the West Bank are not per se inconsistent with international law. Is that the view of the current Administration and the Office of the Legal Adviser today, and can you explain it? Is it your view? Does that mean the Hansell Memorandum was wrong?

A:

(b)(5)

Context: On November 18, former Secretary Pompeo announced that it is the position of the United States that the establishment of Israeli civilian settlements in the West Bank is not *per se* inconsistent with international law. The announcement was understood as a reversal of the Obama Administration's approach towards Israeli settlements. The announcement elicited criticism from Senate Democrats. This Administration has been clear that it views settlement activity as raising concerns with respect to the viability of a two-state solution, but has not addressed settlements in legal terms, to date.

(b)(5)

Israeli Occupation

Q: Does the United States still consider Israel to be an occupying power in the West Bank? In Gaza?

A:

(b)(5)

Context: On November 18, 2019, former Secretary Pompeo announced that it is the position of the United States that the establishment of Israeli civilian settlements in the West Bank is not *per se* inconsistent with international law. On January 28, 2020, the former Administration released the Vision for Peace and committed to recognizing any Israeli actions to extend Israeli sovereignty into areas of the West Bank that the Vision foresees as being part of Israel in a two-state solution. Senate Democrats were sharply critical of both announcements. Questions have been posed to the new administration as to whether it continues to believe that the West Bank (and East Jerusalem) are occupied territory, including in the context of the latest Human Rights Report on Israel, the West Bank and Gaza. Israel withdrew from Gaza in 2005, although it (along with Egypt) continues to control movement and access to the territory.

(b)(5)

Palestinian International Court of Justice (ICJ) Case

Q: How is the United States responding to the Palestinians bringing an ICJ case against the U.S. challenging the embassy move? Will the United States abide by a decision of the ICJ?

A:

(b)(5)

Context: On September 28, 2018, the Palestinians filed an Application Instituting Proceedings against the United States at the ICJ under the VCDR's Optional Protocol Concerning the Compulsory Settlement of Disputes, alleging that the U.S. decision on December 6, 2017, to move the U.S. Embassy to Israel to Jerusalem violated U.S. obligations under the VCDR. The Court scheduled briefing on jurisdiction and admissibility, and the Palestinians filed a Memorial on Jurisdiction on May 15, 2019. Oral argument has not yet been scheduled by the court. Any submissions by the parties to the ICJ currently remain confidential.

Member(s) likely to raise topic: N/A

Palestinian Prisoner Payments

Q: Will you work with the Administration to stop Palestinian prisoner payments? Does legislation like the Taylor Force Act, which restricts assistance until such payments end, help?

A:

(b)(5)

Context: The Taylor Force Act (TFA) was signed into law on March 23, 2018, as part of the Consolidated Appropriations Act, 2018 (P.L. 115-141). The TFA restricts Economic Support Funds made available for the West Bank and Gaza that directly benefit the PA unless the Secretary of State certifies to Congress that the PA has taken specific steps to end the practice of providing payments to individuals, and families of individuals, who committed acts of terrorism. There is a separate similar provision in the annual appropriations act. As the Administration has resumed certain assistance to the West Bank and Gaza, Congress has asked a number of questions about how we ensure assistance is provided consistent with the TFA, as well as other restrictions.

(b)(5)

Consulate General Jerusalem

Q: Will you work with the Administration to reopen the Consulate General in Jerusalem? How is this consistent with our recognition policy and the Embassy move to Jerusalem, and with the Jerusalem Embassy Act?

(b)(5)

Context: Secretary Blinken has stated publicly that the United States intends to reopen the independent U.S. Consulate General in Jerusalem, which merged into Embassy Jerusalem in 2019. (The United States recognized Jerusalem as Israel's capital in December 2017 (while recognizing also that Jerusalem remains a final status issue for negotiation and without taking position on Israel's jurisdiction, disputed borders or boundaries), and announced it would move the U.S. Embassy to Israel there. On May 14, 2018 the US Embassy opened in Jerusalem.) The Administration has also stated that it will not move the U.S. Embassy to Israel out of Jerusalem. After the 2019 merger, the Palestinians largely boycotted engagement with the Palestinian Affairs Unit of the Embassy, objecting to engaging with the US Embassy to Israel.

Member(s) most likely to raise topic:

General Delegation of the PLO in Washington DC

Q: What needs to happen to open the PLO office in D.C.?

(b)(5)

Context: The Office of the General Delegation of the PLO, closed in the last administration, has not reopened, despite the administration's commitment to rebuild relationships with the Palestinians. The Antiterrorism Act of 1987 (ATA) has long restricted the operation and maintenance of the PLO Office. Current statutory waiver requirements for the ATA restrictions involve questions of Palestinians gaining status in specialized agencies of the UN, as well as Palestinian support for an ICC investigation into Israeli nationals. ATCA, as amended, also provides that operation of an office (other than for exclusively UN purposes) would be a basis for deeming jurisdiction over the PA/PLO in certain suits brought by U.S. victims of terrorism.

Members most likely to raise topic:

BENJAMIN L. CARDIN, MARYLAND
JEANNE SHAHEEN, NEW HAMPSHIRE
CHRISTOPHER A. COONS, DELAWARE
CHRISTOPHER MURPHY, CONNECTICUT
TIM KANE, VIRGINIA
EDWARD J. MARKEY, MASSACHUSETTS
JEFF MERKLEY, OREGON
CORY A. BOOKER, NEW JERSEY
BRIAN SCHATZ, HAWAII
CHRIS VAN HOLLER, MARYLAND

JAMES E. RHYAN, OHIO
MARC RUBIO, FLORIDA
RON JOHNSON, WISCONSIN
MITT ROMNEY, UTAH
ROB PORTMAN, OHIO
RAND PAUL, KENTUCKY
TODD YOUNG, INDIANA
JOHN BARRASSO, WYOMING
TED CRUZ, TEXAS
MIKE DEWINE, OHIO
BILLY L. LUSTIG, MISSISSIPPI
BILLY L. LUSTIG, MISSISSIPPI
BILLY L. LUSTIG, MISSISSIPPI

United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

June 9, 2021

The Honorable Joseph R. Biden
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Biden:

I understand that your administration is conducting a review with the goal to re-open the Palestine Liberation Organization (PLO) office in the United States that was shuttered under the Trump Administration. I strongly believe that such a reopening undermines U.S. interests, turns a blind eye to victims of Palestinian-sponsored terrorism, and will make necessary changes in Palestinian conduct less likely.

As you know, the Palestinian Authority (PA) and PLO continue to incentivize and celebrate violence against Israelis through the egregious "pay to slay" program. In 2019 alone, the Palestinians spent \$151 million to support imprisoned terrorists and their families. In addition to these prisoner payments, the PA and PLO maintain a "martyrs' fund" that supports the families of terrorists killed while committing acts of violence. Instead of normalizing this appalling practice through deeper relations with the PA and PLO, your administration should instead pursue changes in Palestinian policies that glorify violence and terrorism.

In addition to Palestinian policies that incentivize violence, the legal requirements under the 1987 Anti-Terrorism Act (ATA), and the 2019 Promoting Security and Justice for Victims of Terrorism Act (PSJVTA) are clear. The 1987 ATA specifically states that "the PLO and its affiliates are a terrorist organization and a threat to the interests of the United States, its allies, and to international law and should not benefit from operating in the United States."

There is also the matter of Palestinian elections. Originally scheduled for May, Mahmoud Abbas has sought yet another delay over fears Hamas would defeat his Fatah party at the polls. Hamas remains a designated foreign terrorist organization, and the potential for it to fully take over Palestinian governance remains a compelling reason to avoid opening an office in the United States.

June 9, 2021

Page 2

The United States is rightly skeptical of the PA's and PLO's compliance with its commitments, and the American people deserve transparency on this important issue. I look forward to consultations with the administration on this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Risch". The signature is stylized with a large, looped initial "J" and a cursive "Risch".

JAMES E. RISCH
Ranking Member
Senate Foreign Relations Committee

CC: The Honorable Antony J. Blinken, Secretary, U.S. Department of State

From: (b)(6)@state.gov>
To: (b)(6)@state.gov>
CC: (b)(6)@state.gov>
Subject: Fwd: PLO Office
Date: Mon, 25 Jan 2021 01:13:08 +0000

Attached is a bit more thorough background

From: (b)(6)@state.gov>
Sent: Tuesday, December 15, 2020, 9:44 PM
To: (b)(6)
Cc: [Redacted]
Subject: RE: PLO Office

Thanks, (b)(6) Even more complicated than I remembered 😊

SENSITIVE BUT UNCLASSIFIED

From: (b)(6)@state.gov>
Sent: Tuesday, December 15, 2020 12:23 PM
To: (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)@state.gov>
Cc: (b)(6)@state.gov>
Subject: Re: PLO Office

Hi (b)(6)-(b)(5); (b)(5)
(b)(5); (b)(5)

[Large redacted area]

Withheld pursuant to exemption

(b)(5)

(b)(5) ; (b)(6)

From: (b)(6)@state.gov
Sent: Tuesday, December 15, 2020 11:48 AM
To: (b)(6)@state.gov; (b)(6)@state.gov; Zatar, (b)(6)@state.gov
Cc: (b)(6)@state.gov
Subject: RE: PLO Office

Thanks, (b)(6) Hi, (b)(6)

I understood that there may be additional conditions for re-opening the PLO office, in addition to their being able to certify that they are operating in pursuit of peace – but I wasn't sure if that was garble.

SENSITIVE BUT UNCLASSIFIED

From: (b)(6)@state.gov
Sent: Tuesday, December 15, 2020 11:17 AM
To: (b)(6)@state.gov; (b)(6)@state.gov; (b)(6)
(b)(6)@state.gov
Cc: (b)(6)@state.gov
Subject: Re: PLO Office

Adding (b)(6) as this seems more focused on the PLO office rather than claims facilitation.

From: (b)(6)@state.gov>
Sent: Tuesday, December 15, 2020 11:11 AM
To: (b)(6)@state.gov>; (b)(6)@state.gov>
Cc: (b)(6)@state.gov>
Subject: Re: PLO Office

Hi (b)(6)

If you are referring to ATCA II, or the Promoting Security and Justice for Victims of Terrorism Act of 2019 (PSJVTA), it includes jurisdictional triggers related to PA/PLO activities, including an office, headquarters, or other facilities in the United States, (b)(5)

(b)(5)

Furthermore, the Antiterrorism Act of 1987 continues to impose restrictions on the operation of an office of the PLO and related activities.

Adding (b)(6) who may be able to provide additional comment.

Also tracking Craft's trip. Post has her arriving the 22nd. Apparently this is being worked directly with (b)(6) I will send (b)(6) an email shortly just to confirm.

- Jonas

(b)(6) / Director / Office of Israel and Palestinian Affairs (NEA/IPA) / U.S. Department of State /
O: +1 (b)(6)
/ npr: (b)(6)@state.gov / sipr: (b)(6)@state.gov

From: (b)(6)@state.gov>
Sent: Tuesday, December 15, 2020 10:40 AM
To: (b)(6)@state.gov>; (b)(6)@state.gov>
Subject: PLO Office

(b)(6)

The Pals here in NY have asked us quietly about the updated restrictions to re-open the PLO office. I

(b)(5). Would be grateful if you had any insight!

(Separately, Amb Craft is hoping to travel to Israel for xmas.. not sure how much you've heard as it still seems a bit far fetched but happy to provide the details I know!)

Best,

(b)(6)

**Political Advisor
United States Mission to the United Nations**

(b)(6)

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SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

Sender: (b)(6)@state.gov>
Recipient: (b)(6)@state.gov>;

(b)(6) [redacted]@state.gov>

Congressional Issues (b)(6)

Why was the Palestine Liberation Organization (PLO) Office closed and can the PLO reopen its mission in Washington, DC?

Instructions:

Work with L (b)(5)

(b)(5)

Short version:

Why and when?

(b)(5)

Limitations to reestablishing a PLO Office:

(b)(5)

(b)(5)



Longer version

Why and when?

(b)(5)



Withheld pursuant to exemption

(b)(5)

From: (b)(6)@state.gov>
To: (b)(6)@state.gov>
Subject: FW: Overview IP and Hard Q+A for Legal Adviser Nominee
Date: Thu, 21 Oct 2021 19:24:31 +0000

Not the terms paper but helpful background.

From: (b)(6)@state.gov>
Sent: Tuesday, September 7, 2021 8:38 PM
To: (b)(6)@state.gov>; (b)(6)@state.gov>
Cc: NEA-IPA-DL <NEA-IPA-DL@state.gov>; (b)(6)@state.gov>
Subject: RE: Overview IP and Hard Q+A for Legal Adviser Nominee

Hi (b)(6)

Thanks – these looks really good overall and I just made a couple minor edits/comments. Clear.

Thanks,
(b)(6)

From: (b)(6)@state.gov>
Sent: Tuesday, September 7, 2021 12:19 PM
To: (b)(6)@state.gov>; (b)(6)@state.gov>
Cc: NEA-IPA-DL <NEA-IPA-DL@state.gov>; (b)(6)@state.gov>
Subject: Overview IP and Hard Q+A for Legal Adviser Nominee

Hi all – we were asked to put together a background IP and hard q+a (at the unclassified level) for IPA issues that our nominee for Legal Adviser (Sarah Cleveland) should know about, or might be asked about. You will recognize a lot of pieces from the papers and questions that have been done for Nides. Welcome IPA clearance by COB tomorrow. Happy to answer any questions. Thanks!

Sender: (b)(6)@state.gov>
Recipient: (b)(6)@state.gov>

U.S. Victims of Palestinian Terrorism and the Anti-Terrorism Clarification Act (ATCA)

Q: What will you do to help U.S. victims of Palestinian terrorism? Do you think federal courts are wrong to have dismissed cases for lack of personal jurisdiction? What is your view on the constitutionality of the Anti-Terrorism Clarification Act (ATCA), as amended?

A:

(b)(5)

Context: ATCA, as amended, provides bases for deeming consent to personal jurisdiction in suits brought by victims of terrorism against the Palestine Liberation Organization and Palestinian Authority, following U.S. court decisions rejecting a number of cases for lack of personal jurisdiction. The legislation also directs the Secretary of State, in consultation with the Attorney General, to develop and initiate a comprehensive process for the Department of State to facilitate the resolution and settlements of covered claims. The constitutionality of ATCA's bases for deemed consent has been challenged in the litigation, and the United States has filed briefs defending the constitutionality of the statute in the *Fuld* and *Sokolow* cases.

(b)(5)

Boycott, Divestment, and Sanctions (BDS) of Israel

Q: What will you do to oppose the BDS movement, and actions that facilitate that movements aim's such as the recent decision by Ben & Jerry's to end its licensing agreement and stop the sale of its ice cream in "occupied Palestinian territory" understood to refer to Israeli settlements in the West Bank and East Jerusalem or the database of companies operating in Israeli settlements published by the Office of the United Nations High Commissioner for Human Rights (OHCHR)? What is your view on anti-BDS legislation? Do you believe it implicates First Amendment concerns? Do you understand federal law to prohibit boycotting Israeli settlements?

A:

(b)(5)

Context: On July 19, 2021, the U.S. company Ben & Jerry's stated that it will stop selling its ice cream in "occupied Palestinian territory," understood to refer to Israeli settlements in the West Bank and East Jerusalem. The U.S. company said sales "in the Occupied Palestinian Territory (OPT)" were "inconsistent with our values." Israeli Prime Minister Naftali Bennett said the move was "morally wrong" and would prove to be "financially wrong." Israel's Ambassador to the United States, Gilad Erdan, in a letter reportedly asked 35 states with anti-BDS laws in place to take action against Ben & Jerry's. Some international organizations and States have taken actions that either encourage states to differentiate between Israel and its settlements, or could make it easier for political or economic differentiation to take place: In February 2020, pursuant to a resolution from the UN Human Rights Council, OHCHR published a database of companies engaged in certain activities in Israeli settlements.

(b)(5)

Israeli Settlements

Q: Secretary Pompeo said that Israeli settlements in the West Bank are not *per se* inconsistent with international law. Is that the view of the current Administration and the Office of the Legal Adviser today, and can you explain it? Is it your view? Does that mean the Hansell Memorandum was wrong?

A:

(b)(5)

Context: On November 18, former Secretary Pompeo announced that it is the position of the United States that the establishment of Israeli civilian settlements in the West Bank is not *per se* inconsistent with international law. The announcement was understood as a reversal of the Obama Administration's approach towards Israeli settlements. The announcement elicited criticism from Senate Democrats. This Administration has been clear that it views settlement activity as raising concerns with respect to the viability of a two-state solution, but has not addressed settlements in legal terms, to date.

(b)(5)

Israeli Occupation

Q: Does the United States still consider Israel to be an occupying power in the West Bank? In Gaza?

A:

(b)(5)

Context: On November 18, 2019, former Secretary Pompeo announced that it is the position of the United States that the establishment of Israeli civilian settlements in the West Bank is not *per se* inconsistent with international law. On January 28, 2020, the former Administration released the Vision for Peace and committed to recognizing any Israeli actions to extend Israeli sovereignty into areas of the West Bank that the Vision foresees as being part of Israel in a two-state solution. Senate Democrats were sharply critical of both announcements. Questions have been posed to the new administration as to whether it continues to believe that the West Bank (and East Jerusalem) are occupied territory, including in the context of the latest Human Rights Report on Israel, the West Bank and Gaza. Israel withdrew from Gaza in 2005, although it (along with Egypt) continues to control movement and access to the territory.

(b)(5)

Palestinian International Court of Justice (ICJ) Case

Q: How is the United States responding to the Palestinians bringing an ICJ case against the U.S. challenging the embassy move? Will the United States abide by a decision of the ICJ?

A:

(b)(5)

Context: On September 28, 2018, the Palestinians filed an Application Instituting Proceedings against the United States at the ICJ under the VCDR's Optional Protocol Concerning the Compulsory Settlement of Disputes, alleging that the U.S. decision on December 6, 2017, to move the U.S. Embassy to Israel to Jerusalem violated U.S. obligations under the VCDR. The Court scheduled briefing on jurisdiction and admissibility, and the Palestinians filed a Memorial on Jurisdiction on May 15, 2019. Oral argument has not yet been scheduled by the court. Any submissions by the parties to the ICJ currently remain confidential.

(b)(5)

Palestinian Prisoner Payments

Q: Will you work with the Administration to stop Palestinian prisoner payments? Does legislation like the Taylor Force Act, which restricts assistance until such payments end, help?

A:

(b)(5)

Context: The Taylor Force Act (TFA) was signed into law on March 23, 2018, as part of the Consolidated Appropriations Act, 2018 (P.L. 115-141). The TFA restricts Economic Support Funds made available for the West Bank and Gaza that directly benefit the PA unless the Secretary of State certifies to Congress that the PA has taken specific steps to end the practice of providing payments to individuals, and families of individuals, who committed acts of terrorism. There is a separate similar provision in the annual appropriations act. As the Administration has resumed certain assistance to the West Bank and Gaza, Congress has asked a number of questions about how we ensure assistance is provided consistent with the TFA, as well as other restrictions.

(b)(5)

Consulate General Jerusalem

Q: Will you work with the Administration to reopen the Consulate General in Jerusalem? How is this consistent with our recognition policy and the Embassy move to Jerusalem, and with the Jerusalem Embassy Act?

(b)(5)

Context: Secretary Blinken has stated publicly that the United States intends to reopen the independent U.S. Consulate General in Jerusalem, which merged into Embassy Jerusalem in 2019. (The United States recognized Jerusalem as Israel's capital in December 2017 (while recognizing also that Jerusalem remains a final status issue for negotiation and without taking position on Israel's jurisdiction, disputed borders or boundaries), and announced it would move the U.S. Embassy to Israel there. On May 14, 2018 the US Embassy opened in Jerusalem.) The Administration has also stated that it will not move the U.S. Embassy to Israel out of Jerusalem. After the 2019 merger, the Palestinians largely boycotted engagement with the Palestinian Affairs Unit of the Embassy, objecting to engaging with the US Embassy to Israel.

(b)(5)

General Delegation of the PLO in Washington DC

Q: What needs to happen to open the PLO office in D.C.?

(b)(5)

Context: The Office of the General Delegation of the PLO, closed in the last administration, has not reopened, despite the administration's commitment to rebuild relationships with the Palestinians. The Antiterrorism Act of 1987 (ATA) has long restricted the operation and maintenance of the PLO Office. Current statutory waiver requirements for the ATA restrictions involve questions of Palestinians gaining status in specialized agencies of the UN, as well as Palestinian support for an ICC investigation into Israeli nationals. ATCA, as amended, also provides that operation of an office (other than for exclusively UN purposes) would be a basis for deeming jurisdiction over the PA/PLO in certain suits brought by U.S. victims of terrorism.

(b)(5)

Israel/Palestinian Affairs

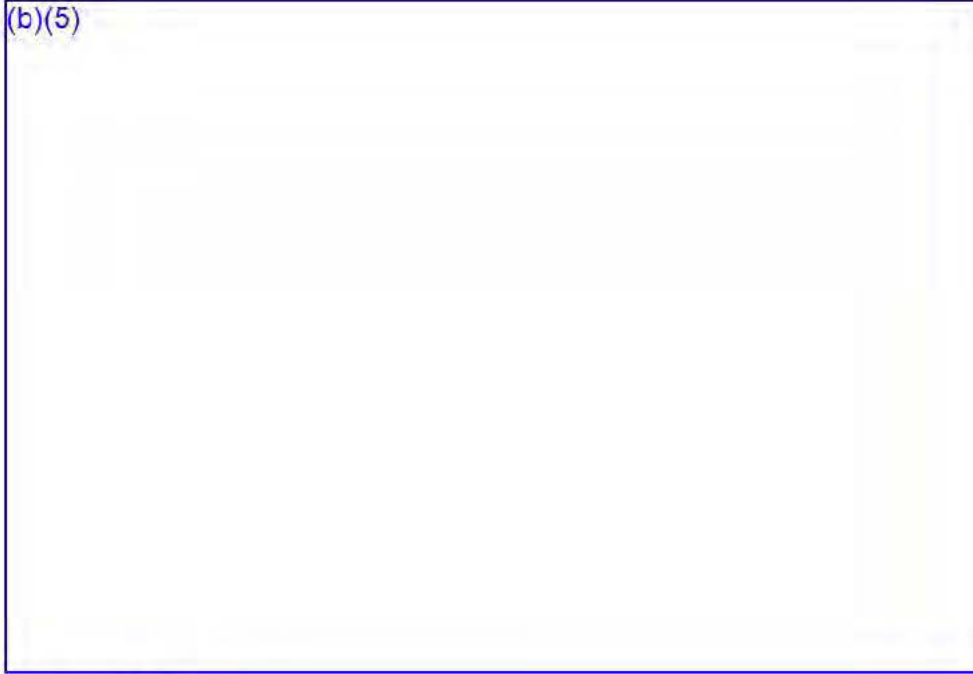
Middle East Peace

(b)(5)

(b)(5)

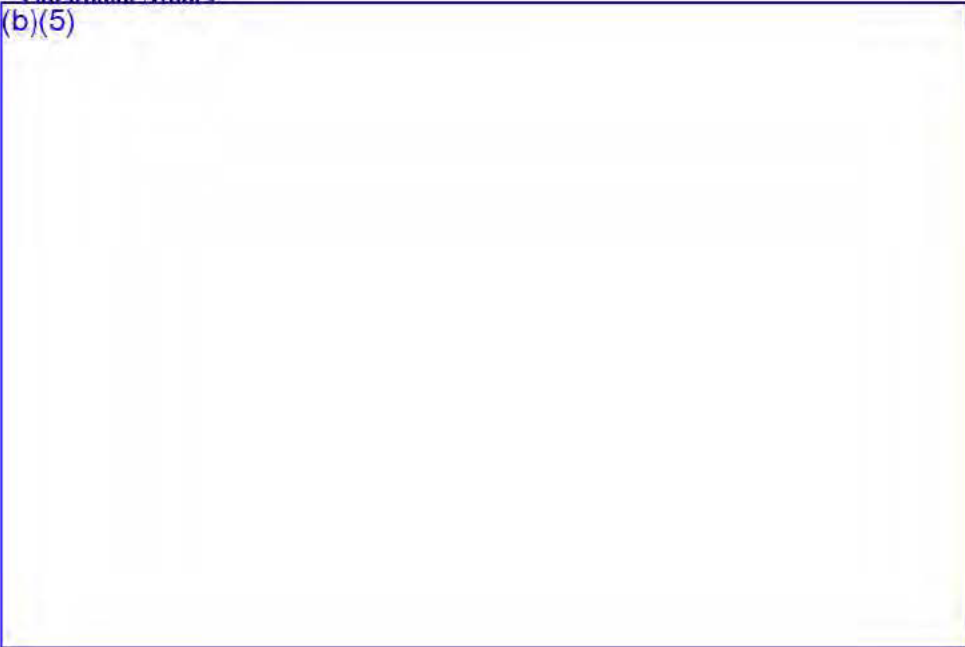
(b)(5)

(b)(5)



Palestinian Affairs

(b)(5)



(b)(5)



From: "Bradley, Tobin J" (b)(6)@state.gov>
To: (b)(6)
Subject: FW: Final PA Assessment Report
Date: Mon, 4 Oct 2021 19:46:54 +0000

Just the first 12 pages. Thanks!

SENSITIVE BUT UNCLASSIFIED

From: (b)(6)@state.gov>
Sent: Friday, October 1, 2021 11:52 AM
To: Bradley, Tobin J (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)@state.gov>
Cc: (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)@state.gov>
Subject: Final PA Assessment Report

DAS Bradley (b)(6) and (b)(6) :

After several months of hard work by our SME team, AME, and Post, I'm pleased to provide you with the final copy of KM's assessment report for the Palestinian Authority. Our team stands ready to participate in any discussions next week that might be useful to answer questions and/or provide further analysis behind KM's recommendations. We also welcome your feedback on the overall template, structure, and framing of this report given that it is KM's first big attempt to utilize the Foundations of Criminal Justice (FOCJ) as an analytical lens, thinking not only about sector-specific reform agendas but also cross-sectoral and government-wide change.

(b)(5)

We are grateful to AME and Post for their support for this assessment (one of the hardest KM has done in a while!), and I am also grateful for their feedback on the draft report to question our assumptions, challenge our analysis, and give us critical feedback that made our report better. However, while KM is confident about our recommendations, we know this report essentially contains our best possible advice – and the forward path, geopolitical strategy, and hard policy and programming choices belong to the AME team, Post, and the Front Office. We hope this document helps makes those choices easier,

and if not, at least clearly presents the most important judgement calls facing INL over the next few months and years.

Thanks again, and we look forward to your questions and further discussion.

(b)(6)

Division Chief, Technical Advisory Division
Office of Knowledge Management
Bureau for International Narcotics and Law Enforcement Affairs (INL)
U.S. Department of State

(b)(6) mobile

SENSITIVE BUT UNCLASSIFIED

Sender: "Bradley, Tobin J" (b)(6)@state.gov>

Recipient: (b)(6)@state.gov>

From: (b)(6)@state.gov>
To: (b)(6)@state.gov>;
(b)(6)@state.gov>;
Malin, Mary Catherine (b)(6)@state.gov>
Subject: Fw: CLEARANCE: Considerations for a U.S. Mission to the Palestinians
Date: Wed, 24 Feb 2021 18:46:36 +0000

(b)(5); (b)(6)

From: (b)(6)@state.gov>
Sent: Wednesday, February 24, 2021 1:23 PM
To: (b)(6)@state.gov>
Subject: Re: CLEARANCE: Considerations for a U.S. Mission to the Palestinians

(b)(5); (b)(6)

(b)(5); (b)(6) Thanks.
From: (b)(6)@state.gov>
Sent: Wednesday, February 24, 2021 12:48 PM
To: (b)(6)@state.gov>
Subject: Re: CLEARANCE: Considerations for a U.S. Mission to the Palestinians

(b)(5); (b)(6)

(b)(6) / Director / Office of Israel and Palestinian Affairs (NEA/IPA) / U.S.
Department of State / Office: + (b)(6) / DRSN: (b)(6) / Mobile: +1 (b)(6)
(b)(6) nipr: (b)(6)@state.gov / sipr: (b)(6)@state.sgov.gov
From: (b)(6)@state.gov>
Sent: Wednesday, February 24, 2021, 12:40 PM
To: (b)(6)
Subject: Re: CLEARANCE: Considerations for a U.S. Mission to the Palestinians

What is the insult? Does the Arabic word they want to use have multiple translations? What are they? Thanks!

From: (b)(6)@state.gov>
Sent: Wednesday, February 24, 2021 11:54 AM
To: (b)(6)@state.gov>
Subject: Re: CLEARANCE: Considerations for a U.S. Mission to the Palestinians

Correct - (b)(6) and Hady (b)(5)
(b)(6) / Director / Office of Israel and Palestinian Affairs (NEA/IPA) / U.S. Department of State / Office: +1 (b)(6) / DRSN: (b)(6) / Mobile: +1 (b)(6)
(b)(6) nipr: (b)(6)@state.gov / sipr: (h)(6)@state.gov.gov
From: (b)(6)@state.gov>
Sent: Wednesday, February 24, 2021 11:48:16 AM
To: (b)(6)@state.gov>
Subject: Re: CLEARANCE: Considerations for a U.S. Mission to the Palestinians

Thanks. (b)(5)
(b)(5); (b)(5)

From: (b)(6)@state.gov>
Sent: Wednesday, February 24, 2021 11:04 AM
To: (h)(6)@state.gov>; (b)(6)@state.gov>; (h)(6)@state.gov>; (b)(6)@state.gov>; M_SpecialAssistants <MSpecials@state.gov>; R_Special Assistants <R_SpecialAssistants@state.gov>; (h)(6)@state.gov>; (b)(6)@state.gov>; OBO-Special Assistants-DL <OBO-SpecialAssistants-DL@state.gov>; (h)(6)@state.gov>; (b)(6)@state.gov>
Cc: (b)(6)@state.gov>; NEA-IPA-DL <NEA-IPA-DL@state.gov>
Subject: CLEARANCE: Considerations for a U.S. Mission to the Palestinians

Seeking final clearance on the attached package laying out considerations for reestablishing a U.S. mission for/to the Palestinians by COB February 25. Please contact me directly if you have any concerns. Naming considerations for the mission reflect NEA Front Office preferences and what is acceptable/understandable when translated to Arabic.

Regards,

(b)(6)

(b)(6) / Director / Office of Israel and Palestinian Affairs (NEA/IPA) / U.S. Department of State / O: +1 (h)(6) / DRSN: (b)(6) / M1: +1 (b)(6) nipr: (b)(6)@state.gov / sipr: (h)(6)@state.gov.gov

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SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

Sender: (b)(6)@state.gov>
Recipient: (b)(6)@state.gov>;
(b)(6)@state.gov>;
Malin, Mary Catherine (b)(6)@state.gov>

From: (b)(6)@state.gov>
To: (b)(6)@state.gov>; (b)(6)@state.gov>
Subject: FW: BCL for Visek-Becker meeting
Date: Thu, 21 Oct 2021 17:52:38 +0000

And our FO has just told me that they need this by 230, apologies.

SENSITIVE BUT UNCLASSIFIED

From: (b)(6)
Sent: Thursday, October 21, 2021 10:46 AM
To: (b)(6)@state.gov>; (b)(6)@state.gov>
Cc: (b)(6)@state.gov>
Subject: BCL for Visek-Becker meeting

Hi all – let me know if any thoughts or concerns on the BCL we put together for Acting L Visek’s meeting with Tal Becker on Monday up in New York: (b)(5); (b)(5)

(b)(5); (b)(5); (b)(6)

(b)(5); (b)(5) We need to get this up to the L FO by COB. Thanks!

SENSITIVE BUT UNCLASSIFIED

Sender: (b)(6)@state.gov>
Recipient: (b)(6)@state.gov>; (b)(6)@state.gov>

From: (b)(6)@state.gov>
To: NEA-IPA-DL <NEA-IPA-DL@state.gov>
Subject: FW: ATTENTION: IP: Reopen DC PLO Office
Date: Fri, 5 Feb 2021 13:46:30 +0000

FYSA

(b)(6) / Director / Office of Israel and Palestinian Affairs (NEA/IPA) / U.S. Department of State / O: +1
(b)(6) / DRSN: (b)(6) / M1: +1 (b)(6) / nipr: (b)(6)@state.gov /
sipr: (b)(6)@state.sgov.gov

SENSITIVE BUT UNCLASSIFIED

From: (b)(6)
Sent: Friday, February 5, 2021 8:44 AM
To: Amr, Hady A (b)(6)@state.gov>
Cc: (b)(6)@state.gov>
Subject: ATTENTION: IP: Reopen DC PLO Office
Importance: High

Hi Hady,

Please find attached the first of the various issue papers you have requested. This one was drafted by

(b)(6) Once you have read them, would you have any concerns (b)(5)

(b)(5)

- (b)(6)

(b)(6) / Director / Office of Israel and Palestinian Affairs (NEA/IPA) / U.S. Department of State / O: +1
(b)(6) / DRSN: (b)(6) / M1: +1 (b)(6) / nipr: (b)(6)@state.gov /
sipr: (b)(6)@state.sgov.gov

SENSITIVE BUT UNCLASSIFIED

SENSITIVE BUT UNCLASSIFIED

Sender: (b)(6)@state.gov>
Recipient: NEA-IPA-DL <NEA-IPA-DL@state.gov>

Considerations for Reestablishing the General Delegation of the PLO (“PLO Office”) in Washington, D.C.

The Palestinian Authority (PA) has expressed strong interest in reopening the PLO office in Washington, D.C. If there is a policy decision by the Administration to support the reestablishment of the PLO Office, the Administration will need to waive or address restrictions under the Antiterrorism Act of 1987. The PA/PLO will also need to take steps to address litigation risk stemming from the Promoting Security and Justice for Victims of Terrorism Act of 2019 (PSJVTA).

Background and Circumstances Leading to Closure

The Antiterrorism Act of 1987 (ATA) has long restricted the operation and maintenance of a General Delegation of the PLO Office in Washington. To permit the PLO Office to open in 1994, President Clinton exercised an authority to waive restrictions on PLO activities in the United States under the ATA. The Department also designated the PLO Office in Washington as a foreign mission, facilitating Department regulation of the office. Permitting the PLO to operate the Washington office was intended to facilitate U.S. engagement with the PLO, which was recognized in the Oslo Accords in 1993 as the sole legitimate representative of the Palestinian people for the conduct of negotiations and foreign relations. The PLO Office’s operations were subsequently maintained by a series of waivers (in recent years authorized in appropriations acts). The authority to make the waiver certifications was delegated to the Secretary of State from the President.

In November 2017, Secretary Tillerson did not make the required waiver certifications, in the wake of Palestinian statements and interactions relating to the International Criminal Court. Accordingly, the Department, in consultation with the White House and relying upon interim DOJ advice, advised the PLO Office first to pause its operations, and then to limit its activities to those that support the objective of achieving a lasting, comprehensive peace between the Israelis and Palestinians.

On September 10, 2018, the Department announced the closure of the PLO Office in Washington. The Department also issued a Federal Register Notice confirming the closure of the office and suspension of benefits under the Foreign Missions Act. The Department explained that it had concluded that the PLO had not taken steps to engage in direct and meaningful negotiations with Israel. As such, and reflecting Congressional concerns, the Department decided to require the closure of the PLO Office in Washington. (These steps were taken despite the contemporaneous receipt of written advice from DOJ that the Executive Branch could rely on the President’s constitutional authorities to decide to permit certain operations of the PLO office.)

(b)(5)

Withheld pursuant to exemption

(b)(5)

Approved: NEA/IPA – (b)(6)

Drafted: NEA/IPA – (b)(6)

Cleared: NEA/IPA: (b)(6) OK
NEA/IPA: (b)(6) OK
NEA/SCA-EX: (b)(6) INFO by Request
H: (b)(6) OK
L/AN: (b)(6) OK
L/AN: (b)(6) OK
L/DL: (b)(6) OK
L/LFA: (b)(6) OK
OFM: (b)(6) OK

From: (b)(6)@state.gov>
To: (b)(6)@state.gov>
Subject: FW: Action Request - PA Report
Date: Thu, 14 Oct 2021 13:21:28 +0000

(b)(6)
Corrections and Justice Team Lead
INL/KM Technical Advisory Division
U.S. Department of State
m:(b)(6)

SENSITIVE BUT UNCLASSIFIED

From: (b)(6)@state.gov>
Sent: Thursday, October 14, 2021 9:16 AM
To: (b)(6)@state.gov>
Subject: RE: Action Request - PA Report

It is here **TAD – 05. Palestinian Authority - Assessment Documents – Draft Assessment Report Final PA Assessment Report Draft** and attached. There is also one with the comments (Final PA Assessment Report with Comments). We still need to add the one with tracked changes to the ShareDrive.

Sincerely,

(b)(6)

SENSITIVE BUT UNCLASSIFIED

From: (b)(6)@state.gov>
Sent: Thursday, October 14, 2021 8:04 AM
To: (b)(6)@state.gov>
Subject: RE: Action Request - PA Report

Hi (b)(6)

I'm trying to find the final full copy of the report on the shared drive (b)(6) in DDL asked for a copy). Where did you end up saving it?

Thanks,

(b)(6)

Corrections and Justice Team Lead

INL/KM Technical Advisory Division
U.S. Department of State
m: (b)(6)

SENSITIVE BUT UNCLASSIFIED

From: (b)(6)@state.gov
Sent: Wednesday, October 13, 2021 10:42 AM
To: (b)(6)@state.gov; (b)(6)@state.gov; (b)(6)@state.gov; (b)(6)@state.gov; (b)(6)@state.gov; (b)(6)@state.gov
Subject: RE: Action Request - PA Report

(b)(6)

Per your request, please see the attached executive summary in both Word and PDF form. Additionally, our collective response – cleared by AME – to the question on PA strategies is below.

Additionally, (b)(6) just emailed the following question: “(b)(6) has been mentioning the FOCR in meetings with USSC (and others?) during the visit. USSC requested a copy of the FOCR. Is there something we can provide them?” Assuming he means the FOJ – it appears this is now out of INL internal. Thoughts on what/if to share? The pyramids and our comments related to the PA were included in the assessment report, which USSC cleared.

Sincerely,

(b)(6)

Team Response

The team reviewed the PA’s National Justice and Rule of Law Sector Strategy (2020-2023), (b)(5)

(b)(5)

[Redacted content]

(b)(5)

(b)(5)

SENSITIVE BUT UNCLASSIFIED

From: (b)(6)@state.gov>
Sent: Tuesday, October 12, 2021 8:13 AM
To: (b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)
(b)(6)@state.gov>; (b)(6)@state.gov>; (b)(6)
(b)(6)@state.gov>
Subject: RE: Action Request - PA Report

PS – on the draft executive summary for NEA, please add large/obvious markings in the header and footer as “SBU Internal Deliberative Draft” or similar, so that NEA does not share it further.

(b)(6)

SENSITIVE BUT UNCLASSIFIED

From: (b)(6)
Sent: Tuesday, October 12, 2021 9:12 AM
To: (b)(6)@state.gov; (b)(6)@state.gov; (b)(6)
(b)(6)@state.gov; (b)(6)@state.gov; (b)(6)
(b)(6)@state.gov
Subject: Action Request - PA Report
Importance: High

Hi all:

Two requests from DAS Bradley for the team, please. (b)(6) can you please take point to address these items with (b)(6) and (b)(6) by **COB Wednesday**?

- **Clean/Final Draft:** Please accept all track changes and delete comment balloons from the version we sent to DAS Bradley last week and save a clean, final version in TAD's shared drive. (Please also keep the latest marked-up version so we can refer to it later.) Then please send me a copy of the clean/final executive summary as DAS Bradley has agreed to share that with NEA Front Office and NEA/IPA. He would like to hold on sharing the full report until after his trip and further engagement with KM and AME.
- **Question on PA Strategies:** Please put together an email response that I can send to DAS Bradley on the following question, covering the main sectors in FOCJ:

- (b)(5)
-
-

Please feel free to crib liberally from the full report as needed, if this content is already covered but perhaps DAS Bradley has not reached it in the document.

Please also clear this draft email response with AME at the working level. I will move it back to TJB once it's ready, and would like to do so by COB Wednesday.

Thank you,
(b)(6)

Division Chief, Technical Advisory Division
Office of Knowledge Management
Bureau for International Narcotics and Law Enforcement Affairs (INL)
U.S. Department of State
(b)(6) mobile

SENSITIVE BUT UNCLASSIFIED

Sender: (b)(6)@state.gov

Recipient: (b)(6) @state.gov>

From: Robert Rutkowski (b)(6)
To: OIGWebmaster@state.gov <OIGWebmaster@state.gov>
CC: (b)(6)
Subject: First White House Meeting Between President Biden and Prime Minister Bennett
Date: Fri, 27 Aug 2021 14:51:24 -0500

Anthony Blinken
Secretary of State
U.S. Department of State
Public Communication Division
PA/PL, Room 2206
Washington, DC 20520
Phone: (b)(6)
E: OIGWebmaster@state.gov

Re: First White House Meeting Between President Biden and Prime Minister Bennett

Dear Secretary:

Welcomed is the first official meeting between President Biden and Israel's new prime minister Naftali Bennett today at the White House. This visit represents an important opportunity, in the post-Trump and Netanyahu eras, to help ensure that the US-Israel relationship can be reset and strengthened in a manner consistent with democratic values and the long-term interests of both countries.

It's clear that there is a very welcome interest from both the US administration and the Israeli government in working well together and finding numerous areas of common ground and close collaboration. At the same time, it's also critical for the Biden Administration to be transparent and firm in stating its disagreement with key aspects of Prime Minister Bennett's policies and worldview.

The President should have made clear that a strong, enduring US-Israel relationship will require seriously addressing the unresolved Israeli-Palestinian conflict and moving toward an end to occupation. To that end, the administration should ensure that issues related to the conflict and the occupation be central to the visit's agenda – alongside important discussion of Iran and other key issues of regional concern.

This May's appalling escalation in violence highlighted that the unresolved conflict and ever-deepening occupation are core challenges that continue to pose a serious threat to regional security and cause suffering for both peoples. Conditions on the ground in Gaza, East

Jerusalem and the West Bank are unstable, unjust and untenable, and meaningful changes in policy and action are required to break a seemingly endless cycle of violence. The US can and should do much more to highlight and seriously address root causes of the conflict.

In particular, I hope that the Biden administration made the following key points in meetings with their Israeli counterparts:

The US expects Israel to take the steps necessary to allow a US Consulate serving Palestinians to reopen at its previous location in Jerusalem by year's end.

The US is deeply concerned by and firmly opposed to acts of de facto annexation taking place in occupied territory, including settlement construction, forced displacement and demolition of Palestinian communities and homes, and the growing frequency of incidents of deadly violence against Palestinian civilians. Consistent with US law and calls for increased accountability by Members of Congress, military equipment supplied by the United States or purchased with US aid may not be used in connection with such activities.

Should the Palestinian government substantially reform its prisoners payments program to meet criteria set out in relevant US law, the US expects that Israel will not move to obstruct the resumption of US direct assistance to the Palestinian Authority, the reopening of the PLO General Delegation to the United States, or efforts to sunset outdated statutory constraints on the US-Palestinian relationship.

The United States is fully committed to addressing threats posed by Iran and preventing Iran from ever developing a nuclear weapon, and believes that the best way to accomplish these goals is via negotiations and diplomacy.

Yours sincerely,
Robert E. Rutkowski

cc:
Prime Minister Naftali Bennett
Prime Minister's Office
3 Kaplan St., Hakiryia
P.O.B. 187
Kiryat Ben-Gurion
Jerusalem 91919
Tel: (b)(6)
Fax: (b)(6)
E-mail: (b)(6)

2527 Faxon Court
Topeka, Kansas 66605-2086
P/F: 1 785 379-9671
E-mail: (b)(6)

Sender: Robert Rutkowski (b)(6)

Recipient: OIGWebmaster@state.gov <OIGWebmaster@state.gov>;
(b)(6)

(SBU) BACKGROUND ON U.S. ASSISTANCE FOR THE WEST BANK AND GAZA

(SBU) Since the signing of the Oslo Accords in 1993, the United States has been the largest benefactor of bilateral assistance to Palestinians in the West Bank and Gaza (WBG), providing over \$6.3 billion in bilateral foreign assistance for economic, development, and security sector programs.¹ In addition, the United States has provided over \$1.3 billion in humanitarian support for the Palestinian people in WBG, to include funding that supports the WBG Emergency Appeal, and over \$4.4 billion for the U.N. Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).² However, in October 2018, the Trump Administration, with limited exception, halted all new assistance, including security and humanitarian, in the WBG.

(SBU) Current Status of Assistance Program: In August 2018, the United States—at the direction of President Trump—ceased contributions for UNRWA and redirected FY 2017 Economic Support Fund (ESF), which supported USAID programming, in the West Bank and Gaza to other global priorities. At that time, the President authorized continued U.S. security assistance – in the form of International Narcotics Control and Law Enforcement (INCLE) to support the U.S. Security Coordinator (USSC) program and demining assistance funded from Non-Proliferation, Anti-Terrorism, Demining and Related Programs (NADR) – to continue on the basis that it played an important role in advancing U.S. national security objectives and preventing terrorist attacks against Israel. However, on October 3, 2018, President Trump signed the Anti-Terrorism Clarification Act of 2018 (P.L. 115-253) (ATCA), which included a provision that deemed defendants in certain terrorism-related civil suits to have consented to the personal jurisdiction of U.S. courts if the defendant accepted U.S. foreign assistance under authorities specified in ATCA after January 31, 2019. At the request of the Palestinian Authority (PA), the Department and the United States Agency for International Development (USAID) ceased providing as of that date all assistance in WBG under authorities specified in ATCA, including ESF and INCLE programs funded with prior-year funds. The Department also halted demining assistance in WBG and support for regional programs funded with prior-year appropriations that benefited Palestinians living in the WBG.

(SBU) The Further Consolidated Appropriations Act, 2020 (P.L. 116-94), signed into law by President Trump on December 20, 2019, includes the Promoting Security and Justice for Victims of Terrorism Act of 2019 (often referred to as ATCA II), which amended the jurisdiction-related provisions of the ATCA. Although, following these amendments, ATCA no longer provides for jurisdiction based on accepting U.S. assistance, the Palestinians did not request the resumption of assistance and no policy decisions were made to restart U.S. assistance programs in WBG. In addition, consistent with the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2020 (Div. G, P.L. 116-94)(FY 2020 SFOAA) and the Joint Explanatory Statement (JES) accompanying the FY 2020 SFOAA, the Department's annual section 653(a) report includes an allocation of \$75 million in ESF for programs in the WBG, although programming has not yet been determined. With a decision to resume assistance, USAID is

¹ This level does not include any humanitarian assistance and/or support, but does include justice-sector and corrections projects.

² This does not include other funding that was used in WBG, such as regular contributions to UNRWA's core budget that provides education, health, and relief services to Palestinian refugees in the West Bank and Gaza, as well as Jordan, Lebanon, and Syria.

ready to implement activities using FY 2020 ESF that focus on economic recovery, meeting basic needs/humanitarian relief, and re-engaging Palestinians through civil society. The FY 2021 SFOAA funding levels for the WBG are consistent with FY 2020, with an additional \$50 million appropriated for the Nita M. Lowey Middle East Partnership for Peace Act.

(SBU) History of U.S. Bilateral Assistance Relationship: Bilateral foreign assistance for the Palestinians was restructured in 2007 following the Hamas takeover in Gaza. From that time until programming was halted, much of U.S. foreign assistance resources have supported security, economic development, self-governance, and humanitarian needs—with a focus on strengthening the governing institutions in the West Bank. In addition to bilateral aid, the United States had historically been the largest bilateral contributor to UNRWA's program budget, which funds schools and health clinics in the West Bank, Gaza, Jordan, Syria, and Lebanon.

(SBU) Bilateral funding streams through which we have provided assistance to the Palestinians include INCLE for security assistance; NADR for West Bank demining; and ESF for implementation of State and USAID economic development, governance, and humanitarian programming in WBG, as outlined below.

- **(SBU) Economic Assistance:** USAID is the principal U.S. government agency that administers the United States' economic assistance program in WBG. This assistance totaled nearly \$5.5 billion since 1994, and programs have improved the provision of public services, such as water and sanitation, health, and education; improved the functioning of local governance; alleviated humanitarian suffering, especially in Gaza; increased economic opportunities by strengthening the private sector and reducing barriers to trade; supported civil society and youth; strengthened people to people reconciliation efforts; and helped the Palestinian Authority's fiscal position through debt relief. In general, these programs have been supported by the Government of Israel. The U.S. government has not provided any bilateral economic assistance to the West Bank or Gaza since FY 2016. Aside from appropriated FY 2020 and FY 2021 ESF, USAID has approximately \$20 million in prior year funding in various mechanisms that could be explored to support this year's programming portfolio, subject to legal review and Department approvals.
- **(SBU) Security Assistance:** Since 2007, the United States has provided \$975 million in INCLE-funded security and rule of law assistance to reform and professionalize the Palestinian Authority Security Forces (PSF), in coordination with the USSC. Complementing these efforts, Conventional Weapons Destruction programs—implemented through two international non-governmental organizations, the HALO Trust and the ITF Enhancing Human Security—focus on the clearance of landmines and unexploded ordnance from land that is not on private property and not subject to disputes between Israelis and Palestinians. These demining programs are managed by the Bureau of Political-Military Affairs' Office of Weapons Removal and Abatement (PM/WRA). While allocations have not been set aside for new INCLE funds in recent years, INL currently has approximately \$36 million of FY 2016 and \$47 million in FY 2017 INCLE funds previously obligated for the WBG that, pending legal review and Department approvals, could support a restart.

- **(SBU) Humanitarian Assistance:** In addition to UNRWA services described below, USAID ESF programs in Gaza have improved services at non-governmental health facilities, improved access to clean water, provided short-term work opportunities, and provided humanitarian commodities. USAID, via the UN World Food Program (WFP), last provided humanitarian food assistance to the West Bank and Gaza in early 2018, reaching approximately 186,500 vulnerable individuals. Last year, USAID provided \$5 million in International Disaster Assistance to support the response to the COVID-19 pandemic in the West Bank through the Catholic Relief Services.

(SBU) The United States and UNRWA: UNRWA was established by the UN General Assembly in 1949. Founded before the creation of both the UN High Commissioner for Refugees (UNHCR) and the 1951 Refugee Convention, UNRWA has the sole UN mandate to provide education, health care, and relief and social services to more than 5.6 million Palestinian beneficiaries across its five geographical fields of operation: Syria, Lebanon, Jordan, the West Bank, and Gaza.³ On December 6, 2019, the UN General Assembly voted to renew UNRWA's mandate through June 30, 2023.

Since UNRWA's inception in 1949, the United States has been the agency's largest donor, with more than \$6 billion in contributions. UNRWA's program budget is funded mainly by Western governments, international organizations, and private donors via voluntary contributions. Core programs include providing food, shelter, education, medical care, microfinance, and other humanitarian and social services to designated beneficiaries. UNRWA also launches emergency appeals and special funds for pressing humanitarian needs. According to UN reporting, UNRWA educates more than 532,000 children in its 708 schools. It also operates 144 primary health facilities that provide services to 3.7 million Palestinian refugees (as defined annually) and provides relief to Palestinian refugees in places like Syria and Gaza where there are urgent and critical humanitarian needs. In Gaza alone, UNRWA provides emergency food assistance to approximately one million beneficiaries, out of a total population of approximately 1.8 million.

In January 2018, the U.S. government, through the Bureau of Population, Refugees, and Migration (PRM), made its last voluntary contribution to UNRWA, which totaled \$60 million. The previous year, the United States contributed a total of \$359.3 million to UNRWA: \$160 million to the program budget, \$103.3 million to an emergency appeal for Syria, \$95 million to a WBG emergency appeal, and around \$966,000 to an anti-gender-based violence initiative called "Safe from the Start". On August 31, 2018, the State Department announced the United States would not make further contributions to UNRWA, noting that UNRWA's business model and fiscal practices, tied to an expanding community of beneficiaries, are unsustainable and operate in permanent crisis mode. UNRWA no longer provides estimates of its annual financial shortfall, but the agency reports that it has carried significant debt into 2020. In July 2020, UNRWA reported its 2020 program budget of \$806 million was only 58 percent funded, and the agency still needed \$335 million to cover core services through the end of the year. In

³ UNRWA's definition of "Palestine refugee" is: "[P]ersons whose normal place of residence was Palestine during the period of June 1, 1946 to May 15, 1948, and who lost both home and means of livelihood as a result of the 1948 conflict." Descendants of eligible male refugees are also eligible for registration with UNRWA. As a result, millions of individuals of Palestinian descent born after the initial displacement are eligible to receive certain benefits from UNRWA.

addition, in March 2020, UNRWA called for an additional \$14 million to support its COVID-19 emergency appeal, primarily to strengthen and support UNRWA health clinic services across all five fields of operation, as well as continue emergency food aid in Gaza.

Approved: NEA - (b)(6)

Drafted: NEA/IPA - (b)(6) and cell: (b)(6)

Cleared:

L/LFA:	(b)(6)	OK
L/LFA:		OK
L/AN:		OK
L/HRR:		OK
PRM:	(b)(6) (2020 version)	OK
USAID/ME:	(b)(6)	OK
F:	(b)(6)	OK
NEA/AC:	(b)(6) (2020 version)	OK
INL:	(b)(6)	OK
PM/WRA:	(b)(6) (2020 version)	OK

PALESTINIAN AUTHORITY ASSESSMENT REPORT

JULY – AUGUST 2021

Law Enforcement – July 10 – July 25

CTI and CIS – July 23 – July 30

MOI Reform – July 26 – July 30

Corrections – July 26 – August 2

Justice – August 5 – 19

Withheld pursuant to exemption

(b)(5)

Withheld pursuant to exemption

(b)(5)

Withheld pursuant to exemption

(b)(5)

(U) Israel/Palestinian Affairs

Middle East Peace

(U) The United States seeks to advance the possibility of achieving a negotiated two-state solution in which Israel lives in peace and security alongside a viable Palestinian state. The United States opposes any unilateral actions that make a two-state outcome to the Israeli-Palestinian conflict more difficult, whether incitement to violence, settlement activity, or annexation of territory. In support of peace, the administration is working to ensure that Israelis and Palestinians enjoy equal measures of freedom, security, prosperity, and democracy.

(U) **Settlements:** The last administration issued a statement by Secretary Pompeo on U.S. policy on the legality of settlements in the West Bank (sometimes called the "Pompeo Doctrine"). The legal position announced was fairly nuanced: that the establishment of Israeli civilian settlements in the West Bank is not per se inconsistent with international law, and that legal conclusions relating to individual cases of settlement activity must depend on an assessment of specific facts and circumstances. It has been understood as announcing a policy that the United States would not object to, and might even support Israeli settlement activity, especially in areas that the last administration's vision for peace had identified as likely to become part of Israel. This administration has committed to prioritizing the preservation of a two-state solution, including by opposing unilateral actions such as settlement activity, that make that more difficult.

(U) **Jerusalem:** The United States recognized Jerusalem as Israel's capital in December 2017 (while recognizing also that Jerusalem remains a final status issue for negotiation and without taking position on Israel's jurisdiction, disputed borders or boundaries), and announced it would move the U.S. Embassy to Israel there. On May 14, 2018, the US Embassy opened in Jerusalem.

(U) **International Court of Justice:** The Palestinians filed an application with the ICJ on September 28, 2018, requesting the ICJ to declare that the move of the U.S. Embassy to Jerusalem is a breach of the Vienna Convention on Diplomatic Relations (VCDR), and to order the United States to withdraw its Embassy from Jerusalem. L is leading the efforts to defend the United States in the Embassy Jerusalem case. The United States does not believe the Palestinians are eligible to accede to the treaties (VCDR and Optional Protocol) that they are attempting to use to obtain jurisdiction of the court, and we are not in a treaty relationship with them. We have communicated this view to the Court. The Court moved forward briefing on jurisdiction and admissibility, and the Palestinians filed a Memorial on Jurisdiction on May 15, 2019. Oral argument has not yet been scheduled by the court.

Israel

(U) **Normalization:** The Administration welcomes and supports the normalization agreements between Israel and countries in the Arab and Muslim world, and looks for other opportunities to expand cooperation among countries in the region.

(U) **BDS:** The Administration firmly rejects the BDS movement, which unfairly singles out Israel. The so-called BDS movement, distinct from the Arab League Boycott of Israel, emerged in 2005 with the stated principal goals of building international support for using "non-violent punitive measures" to place additional pressure on the Israeli government to end occupation of

the West Bank and Gaza; recognize the equal rights of Arab Israelis; and recognize the right of return for Palestinian refugees. Pro-BDS activists typically advocate for national and local governments, private companies, academic institutions, and others to adopt a range of measures intended to isolate Israel. A reported 35 states have adopted laws, executive orders, or resolutions designed to discourage boycotts against Israel. The language in these measures varies widely, including whether they expressly refer to "Israeli-controlled territories" or to "Israel" generally. The constitutionality of a number of state anti-BDS measures has been subject to challenge in federal court. To date, the United States has not intervened in any cases challenging the constitutionality of state anti-BDS measures.

Palestinian Affairs

(U) **Assistance/Prisoner Payments:** In March 2021, the Biden Administration announced the resumption of assistance to the West Bank and Gaza. Additional assistance was announced in the aftermath of the Gaza escalation. The Taylor Force Act (TFA) continues to restrict ESF that directly benefits the Palestinian Authority (PA) (with certain exceptions), until the Secretary of State can make a certification to Congress regarding, in particular, Palestinian actions to end or reform its "prisoner payments" program, which provides payments to individuals and families of individuals who are convicted of, or died committing, acts of terrorism.

(U) **Antiterrorism Suits:** The Anti-Terrorism Clarification Act (ATCA) of 2018, as amended by the Promoting Security and Justice for Victims of Terrorism Act (PSJVTA) of 2019, seeks to assist U.S. plaintiffs who had pursued or been awarded judgements by U.S. courts against the PLO and/or Palestinian Authority (PA) for claims related to acts of terrorism occurring in the West Bank and Israel, largely during the Second Intifada, but had seen those awards reversed or claims dismissed for lack of personal jurisdiction, by permitting consent to personal jurisdiction to be deemed, if the PA/PLO make certain prisoner payments or engage in certain activities in the United States (including having an office in Washington). The U.S. government has filed in district court in the *Fuld* and *Sokolow* cases in support of the constitutionality of the jurisdictional provision, but no court has yet ruled on the question. PSJVTA also directed the Department to work to facilitate the settlement of the claims of U.S. victims against the PA/PLO, and the Office of the Legal Adviser leads those efforts, in consultation with NEA.

(U) **PLO Office:** While the administration is working to rebuild relationships with the Palestinians, the Office of the General Delegation of the PLO, closed in the last administration, has not reopened. The Antiterrorism Act of 1987 (ATA) has long restricted the operation and maintenance of the PLO Office. The current statutory waiver authority for the ATA restrictions requires a certification regarding Palestinians gaining membership as a state in UN specialized agencies, as well as Palestinian support for an International Criminal Court (ICC) investigation into Israeli nationals.

(U) **Consulate General Jerusalem:** Secretary Blinken has stated publicly that the United States intends to reopen the independent U.S. Consulate General in Jerusalem, which merged into Embassy Jerusalem in 2019. The Administration has also stated that it will not move the U.S. Embassy to Israel out of Jerusalem.

U.S. Victims of Palestinian Terrorism and the Anti-Terrorism Clarification Act (ATCA)

Q: What will you do to help U.S. victims of Palestinian terrorism? Do you think federal courts are wrong to have dismissed cases for lack of personal jurisdiction? What is your view on the constitutionality of the Anti-Terrorism Clarification Act (ATCA), as amended?

A:

(b)(5)

Context: ATCA, as amended, provides bases for deeming consent to personal jurisdiction in suits brought by victims of terrorism against the Palestine Liberation Organization and Palestinian Authority, following U.S. court decisions rejecting a number of cases for lack of personal jurisdiction. The legislation also directs the Secretary of State, in consultation with the Attorney General, to develop and initiate a comprehensive process for the Department of State to facilitate the resolution and settlements of covered claims. The constitutionality of ATCA's bases for deemed consent has been challenged in the litigation, and the United States has filed briefs defending the constitutionality of the statute in the *Fuld* and *Sokolow* cases.

Member(s) likely to raise topic: (b)(5)

(b)(6)

Boycott, Divestment, and Sanctions (BDS) of Israel

Q: What will you do to oppose the BDS movement, and actions that facilitate that movements aim’s such as the recent decision by Ben & Jerry’s to end its licensing agreement and stop the sale of its ice cream in “occupied Palestinian territory” understood to refer to Israeli settlements in the West Bank and East Jerusalem or the database of companies operating in Israeli settlements published by the Office of the United Nations High Commissioner for Human Rights (OHCHR)? What is your view on anti-BDS legislation? Do you believe it implicates First Amendment concerns? Do you understand federal law to prohibit boycotting Israeli settlements?

A:

(b)(5)

Context: On July 19, 2021, the U.S. company Ben & Jerry's stated that it will stop selling its ice cream in “occupied Palestinian territory,” understood to refer to Israeli settlements in the West Bank and East Jerusalem. The U.S. company said sales “in the Occupied Palestinian Territory (OPT)” were “inconsistent with our values.” Israeli Prime Minister Naftali Bennett said the move was “morally wrong” and would prove to be “financially wrong.” Israel’s Ambassador to the United States, Gilad Erdan, in a letter reportedly asked 35 states with anti-BDS laws in place to take action against Ben & Jerry’s. Some international organizations and States have taken actions that either encourage states to differentiate between Israel and its settlements, or could make it easier for political or economic differentiation to take place: In February 2020, pursuant to a resolution from the UN Human Rights Council, OHCHR published a database of companies engaged in certain activities in Israeli settlements,

Member(s) likely to raise topic: (b)(5)

(b)(5)

Israeli Settlements

Q: Secretary Pompeo said that Israeli settlements in the West Bank are not per se inconsistent with international law. Is that the view of the current Administration and the Office of the Legal Adviser today, and can you explain it? Is it your view? Does that mean the Hansell Memorandum was wrong?

A:

(b)(5)

Context: On November 18, former Secretary Pompeo announced that it is the position of the United States that the establishment of Israeli civilian settlements in the West Bank is not *per se* inconsistent with international law. The announcement was understood as a reversal of the Obama Administration's approach towards Israeli settlements. The announcement elicited criticism from Senate Democrats. This Administration has been clear that it views settlement activity as raising concerns with respect to the viability of a two-state solution, but has not addressed settlements in legal terms, to date.

Member(s) likely to raise topic: (b)(5)

(b)(5)

Israeli Occupation

Q: Does the United States still consider Israel to be an occupying power in the West Bank? In Gaza?

A:

(b)(5)

Context: On November 18, 2019, former Secretary Pompeo announced that it is the position of the United States that the establishment of Israeli civilian settlements in the West Bank is not *per se* inconsistent with international law. On January 28, 2020, the former Administration released the Vision for Peace and committed to recognizing any Israeli actions to extend Israeli sovereignty into areas of the West Bank that the Vision foresees as being part of Israel in a two-state solution. Senate Democrats were sharply critical of both announcements. Questions have been posed to the new administration as to whether it continues to believe that the West Bank (and East Jerusalem) are occupied territory, including in the context of the latest Human Rights Report on Israel, the West Bank and Gaza. Israel withdrew from Gaza in 2005, although it (along with Egypt) continues to control movement and access to the territory.

Member(s) likely to raise topic: (b)(5)

(b)(5)

Palestinian International Court of Justice (ICJ) Case

Q: How is the United States responding to the Palestinians bringing an ICJ case against the U.S. challenging the embassy move? Will the United States abide by a decision of the ICJ?

A:

(b)(5)

Context: On September 28, 2018, the Palestinians filed an Application Instituting Proceedings against the United States at the ICJ under the VCDR's Optional Protocol Concerning the Compulsory Settlement of Disputes, alleging that the U.S. decision on December 6, 2017, to move the U.S. Embassy to Israel to Jerusalem violated U.S. obligations under the VCDR. The Court scheduled briefing on jurisdiction and admissibility, and the Palestinians filed a Memorial on Jurisdiction on May 15, 2019. Oral argument has not yet been scheduled by the court. Any submissions by the parties to the ICJ currently remain confidential.

Member(s) likely to raise topic: N/A

Palestinian Prisoner Payments

Q: Will you work with the Administration to stop Palestinian prisoner payments? Does legislation like the Taylor Force Act, which restricts assistance until such payments end, help?

A:

(b)(5)

Context: The Taylor Force Act (TFA) was signed into law on March 23, 2018, as part of the Consolidated Appropriations Act, 2018 (P.L. 115-141). The TFA restricts Economic Support Funds made available for the West Bank and Gaza that directly benefit the PA unless the Secretary of State certifies to Congress that the PA has taken specific steps to end the practice of providing payments to individuals who committed acts of terrorism and to their families. As the Administration is working to resume certain assistance to the West Bank and Gaza, Congress has asked a number of questions about how we ensure assistance is provided consistent with the TFA, as well as other restrictions.

Member(s) likely to raise topic: (b)(5)

Consulate General Jerusalem

Q: Will you work with the Administration to reopen the Consulate General in Jerusalem? How is this consistent with our recognition policy and the Embassy move to Jerusalem, and with the Jerusalem Embassy Act?

(b)(5)

Context: Secretary Blinken has stated publicly that the United States intends to reopen the independent U.S. Consulate General in Jerusalem, which merged into Embassy Jerusalem in 2019. (The United States recognized Jerusalem as Israel's capital in December 2017 – while recognizing also that Jerusalem remains a final status issue for negotiation and without taking position on Israel's jurisdiction, disputed borders or boundaries – and announced it would move the U.S. Embassy to Israel there. On May 14, 2018 the US Embassy opened in Jerusalem.) The current Administration has stated that it will not move the U.S. Embassy to Israel out of Jerusalem. After the 2019 merger, the Palestinians largely boycotted engagement with the Palestinian Affairs Unit of the Embassy, objecting to engaging with the US Embassy to Israel.

Member(s) most likely to raise topic:

General Delegation of the PLO in Washington DC

Q: What needs to happen to open the PLO office in D.C.?

(b)(5)

Context: The Office of the General Delegation of the PLO, closed in the last administration, has not reopened, although the administration has stated its commitment to rebuild relationships with the Palestinians. The Antiterrorism Act of 1987 (ATA) has long restricted the operation and maintenance of the PLO Office. The current statutory waiver authority for the ATA restrictions requires certifications regarding the Palestinians gaining status in UN specialized agencies, as well as Palestinian support for an ICC investigation into Israeli nationals. ATCA, as amended, also provides that operation of an office (other than an office for exclusively UN purposes) would be a basis for deeming jurisdiction over the PA/PLO in certain suits brought by U.S. victims of terrorism.

Members most likely to raise topic:

Withheld pursuant to exemption

(b)(5)

Statutory Restrictions on the PLO's Washington Office

The Anti-Terrorism Act of 1987 may not constitutionally bar the Palestine Liberation Organization from maintaining its Washington, D.C. office and undertaking diplomatic activities the Secretary of State wishes to authorize.

September 11, 2018

MEMORANDUM OPINION FOR THE LEGAL ADVISER DEPARTMENT OF STATE

Earlier this year, you asked whether the State Department could authorize the Palestine Liberation Organization ("PLO") to engage in certain diplomatic activities out of its Washington, D.C. office. At the time, the State Department had concluded that these activities, which included communications with the U.S. government, would advance U.S. efforts to promote peace between Israel and the Palestinians, and that barring the PLO from engaging in these activities would interfere with U.S. diplomacy.¹ Your formal request followed an informal inquiry in November 2017.

These requests arose because the Secretary of State had determined that he could no longer make the required certification under the federal appropriations law that would permit the waiver of section 1003 of the Anti-Terrorism Act of 1987 ("ATA"), Pub. L. No. 100-204, tit. X, § 1003, 101 Stat. 1331, 1406, 1407 (1987). Section 1003 bars the PLO from maintaining its Washington office or from expending funds in the United States to promote the PLO's interests, including the diplomatic activities that the State Department wished to authorize. 22 U.S.C. § 5202(2), (3). If section 1003 were constitutional, then the PLO was obliged to close its Washington office immediately and to cease funding its activities in the United States.

When the question first arose, we informally advised, consistent with this Office's prior position, that such restrictions would encroach upon

¹ See Letter for Steven A. Engel, Assistant Attorney General, Office of Legal Counsel, from Jennifer G. Newstead, Legal Adviser, Dep't of State at 1 (Apr. 23, 2018) ("State Opinion Request"); E-mail for Sarah Harris, Deputy Assistant Attorney General, Office of Legal Counsel, from Mary Mitchell, Assistant Legal Adviser, Dep't of State, *Re: PLO Office Opinion Request – Responses to Questions* att. at 4–6 (May 31, 2018, 10:54 PM) ("May 31, 2018 E-mail").

the President's exclusive constitutional authority to conduct diplomatic relations. On April 23, 2018, you requested a formal opinion on the subject. Before we completed that opinion, however, the State Department concluded that the PLO had failed to use its Washington office to engage in direct and meaningful negotiations on achieving a comprehensive peace settlement and, therefore, that closing the PLO's Washington office would serve the foreign policy interests of the United States.

This memorandum explains the basis for the informal advice that the State Department relied upon in authorizing the PLO's Washington office to remain open between November 2017 and September 2018. Under the Constitution, the President has the exclusive authority to receive foreign diplomatic agents in the United States and to determine the conditions under which they may operate. Since the enactment of the ATA in 1987, Presidents have consistently recognized the statute's potential constitutional infirmity, and this Office has twice concluded that Congress may not prohibit the President from authorizing the PLO to conduct diplomatic activities in the United States. In keeping with that established position, we advised that the ATA may not constitutionally bar the PLO from maintaining its Washington office and undertaking diplomatic activities the Secretary of State wishes to authorize. The Executive Branch may also close the PLO's Washington office, consistent with the ATA's restrictions. But the Constitution requires that the President retain the flexibility to calibrate the United States' diplomatic contacts as circumstances warrant.

I.

The PLO was established in 1964 for the purpose of working on behalf of "the Palestinian Arab people" to "liberate its homeland" through armed conflict with the State of Israel. *See* Palestinian National Charter intro. & art. 25 (1964). For several decades, the PLO pursued those aims through acts of violence, often directed against civilians in Israel and the rest of the world. During that period, the United States refused to maintain any relations with the PLO. *See* State Opinion Request, *supra* note 1, at 1 n.4.

In 1974, the United Nations General Assembly granted the PLO the status of an observer in its proceedings as the representative of the Palestinian people. *See* G.A. Res. 3210 (XXIX) (Oct. 14, 1974); G.A. Res.

3237 (XXIX) (Nov. 22, 1974). In 1978, the PLO opened a Washington information office to act as “the ‘voice’ of the PLO in the United States.” *Constitutionality of Closing the Palestine Information Office, an Affiliate of the Palestine Liberation Organization*, 11 Op. O.L.C. 104, 105 (1987) (“*Palestine Information Office*”). The State Department closed that office in 1987 because individuals and organizations affiliated with the PLO committed and supported acts of terrorism. *See* Determination and Designation of Benefits Concerning Palestine Information Office, 52 Fed. Reg. 37,035 (Oct. 2, 1987).

Shortly thereafter, on December 22, 1987, Congress enacted the ATA, a statute “unique” in “the long history of Congressional enactments.” *United States v. Palestine Liberation Org.*, 695 F. Supp. 1456, 1460 (S.D.N.Y. 1988). In section 1002 of the ATA, Congress “determine[d] that the PLO and its affiliates are a terrorist organization and a threat to the interests of the United States, its allies, and to international law and should not benefit from operating in the United States.” 22 U.S.C. § 5201(b). Section 1003 of the Act provides in full:

It shall be unlawful, if the purpose be to further the interests of the [PLO] or any of its constituent groups, any successor to any of those, or any agents thereof, on or after the effective date of this chapter—

(1) to receive anything of value except informational material from the PLO or any of its constituent groups, any successor thereto, or any agents thereof;

(2) to expend funds from the PLO or any of its constituent groups, any successor thereto, or any agents thereof; or

(3) notwithstanding any provision of law to the contrary, to establish or maintain an office, headquarters, premises, or other facilities or establishments within the jurisdiction of the United States at the behest or direction of, or with funds provided by the [PLO] or any of its constituent groups, any successor to any of those, or any agents thereof.

22 U.S.C. § 5202. Section 1004 provides that the Attorney General “shall take the necessary steps and institute the necessary legal action to effectuate the policies and provisions of” the ATA. *Id.* § 5203(a). Section 1005(b) states that the ATA’s provisions “shall cease to have effect if the

President certifies . . . that the [PLO], its agents, or constituent groups thereof no longer practice or support terrorist actions anywhere in the world.” 22 U.S.C. § 5201 note.

At the time of the ATA’s passage, the United States did not maintain any relations with the PLO, and the Executive Branch had already shut down the PLO’s Washington office. Nonetheless, in signing the ATA into law, President Reagan expressed concern that its provisions would infringe upon the President’s exclusive authority to conduct the Nation’s diplomatic affairs. As he explained in his signing statement:

Section 1003 of the Act prohibits the establishment anywhere within the jurisdiction of the United States of an office “to further the interests of” the Palestine Liberation Organization. The effect of this provision is to prohibit diplomatic contact with the PLO. I have no intention of establishing diplomatic relations with the PLO. However, the right to decide the kind of foreign relations, if any, the United States will maintain is encompassed by the President’s authority under the Constitution, including the express grant of authority in Article II, Section 3, to receive ambassadors. I am signing the Act, therefore, only because I have no intention of establishing diplomatic relations with the PLO, as a consequence of which no actual constitutional conflict is created by this provision.

Statement on Signing the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (Dec. 22, 1987), 2 Pub. Papers of Pres. Ronald Reagan 1541, 1542 (1987).²

In 1993, in connection with the Oslo Accords, the PLO renounced terrorism and recognized Israel’s right to exist, and Israel recognized the PLO as the representative of the Palestinian people for purposes of negotiations for permanent status and peace. State Opinion Request, *supra* note 1, att. at 3 & n.8. In June 1994, the State Department authorized the

² The PLO has also maintained a United Nations observer mission in New York since 1974. In 1988, a district court held that section 1003(3) did not require closing that mission because the ATA should not be read to abrogate the United States’ treaty obligations under the United Nations Headquarters Agreement, which applies to U.N. missions. *PLO*, 695 F. Supp. at 1468–71. The United States did not appeal this ruling. Accordingly, the PLO has maintained that U.N. mission for several decades notwithstanding section 1003.

PLO to open a foreign mission in Washington. *See* Letter for Hasan Abdel Rahman, Palestine Affairs Office, from Eric J. Boswell, Director, Office of Foreign Missions, Dep't of State (June 22, 1994) ("Boswell Letter"). Congress, in the Middle East Peace Facilitation Act of 1993, also authorized President Clinton to suspend section 1003 of the ATA, and later authorized that suspension in annual appropriations riders.³ In authorizing the opening of a foreign mission, the State Department advised the PLO that its members would lack diplomatic status and that they must continue to meet the requirements of the suspension. Boswell Letter at 1–2.

Since 1994, Presidents have routinely exercised their authority to waive section 1003's requirements. In signing appropriations bills, however, Presidents on several occasions have reiterated President Reagan's concern and advised that the conditions of certification could unconstitutionally restrict the President's authorities over foreign affairs.⁴ Despite those

³ *See, e.g.*, Middle East Peace Facilitation Act of 1993, Pub. L. No. 103-125, § 3(b)(2), (d)(2), 107 Stat. 1309, 1310 (authorizing temporary waiver if the President certified that it advanced the national interest and that the PLO was abiding by its Oslo Accords commitments); Middle East Peace Facilitation Act of 1994, Pub. L. No. 103-236, tit. V, pt. E, § 583(a), (b)(2), 108 Stat. 382, 488, 488–89 (same); Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998, Pub. L. No. 105-118, § 539(d), 111 Stat. 2386, 2417–18 (authorizing six-month waiver if President certified it was "important to the national security interests of the United States"); Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012, Pub. L. No. 112-74, div. I, § 7086(b), 125 Stat. 786, 1164, 1265 (authorizing six-month waiver if the President certified that Palestinians had not obtained member state standing in the United Nations).

⁴ *See, e.g.*, *Statement on Signing the Consolidated Appropriations Act, 2017*, 2017 Daily Comp. Pres. Doc. No. 312, at 1 (May 5, 2017) (Pres. Trump) ("Numerous provisions could, in certain circumstances, interfere with the exercise of my constitutional authorities . . . to receive ambassadors . . . and to recognize foreign governments[.]"); *Statement on Signing the Consolidated Appropriations Act, 2012* (Dec. 23, 2011), 2 Pub. Papers of Pres. Barack Obama 1568, 1569 (2011) ("Certain provisions in Division I . . . , including section[] 7086, hinder my ability to receive diplomatic representatives of foreign governments."); *Statement on Signing the Consolidated Appropriations Legislation for Fiscal Year 2000* (Nov. 29, 1999), 2 Pub. Papers of Pres. William J. Clinton 2156, 2160 (1999) ("This legislation includes a number of provisions . . . regarding the conduct of foreign affairs that raise serious constitutional concerns. . . . [S]ome provisions would constrain . . . the exercise of my exclusive authority to receive ambassadors and to conduct diplomacy."); *see also, e.g.*, *Statement on Signing the Palestinian Anti-Terrorism Act of 2006* (Dec. 21, 2006), 2 Pub. Papers of Pres. George W. Bush 2221, 2221 (2006) (objecting to a provision purporting to prevent the Palestinian Authority from establishing a U.S. office); *Statement on Signing the Foreign Relations Authorization Act, Fiscal Year*

concerns, each year, the President or the Secretary of State (to whom the President later delegated the waiver authority) issued the required certification and waived the restrictions of section 1003.⁵

That changed in the fall of 2017. The 2017 waiver provision authorized the President to suspend the ATA only if he were able to certify both that the Palestinians had not attained formal status within the United Nations and that they had not taken any actions to prompt the International Criminal Court (“ICC”) to investigate alleged crimes committed by Israeli nationals against Palestinians. *See* Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017, Pub. L. No. 115-31, div. J, § 7041(*l*)(2)(B), 131 Stat. 135, 589, 667–68. On November 15, 2017, the Secretary of State concluded that he could not make this required certification. State Opinion Request, *supra* note 1, att. at 2.

On November 17, the State Department informed the PLO that the waiver of statutory restrictions had lapsed, instructed the PLO to cease operations at its Washington office, and promised further guidance after additional review. Letter for Husam Zomlot, Chief Representative, General Delegation of the PLO, from Cliff Seagroves, Acting Director, Office of Foreign Missions, Dep’t of State (Nov. 17, 2017). Ten days later, State advised that the Washington office could continue to engage in activities “that support the objective of achieving a lasting, comprehensive peace between the Israelis and Palestinians.” Letter for Husam Zomlot, Chief Representative, General Delegation of the PLO, from Cliff Seagroves, Acting Deputy Director, Office of Foreign Missions, Dep’t of State (Nov.

2003 (Sept. 30, 2002), 2 Pub. Papers of Pres. George W. Bush 1697, 1698 (2002) (objecting to a provision requiring the President to rescind any section 1003 waiver upon certain triggering events, and advising that the Executive Branch would comply with that requirement only to the extent the President deemed it consistent with his foreign-affairs responsibilities).

⁵ *See, e.g.*, Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization Office (Apr. 10, 2013), 78 Fed. Reg. 25,780 (May 2, 2013); Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization, Pres. Determination No. 01-13 (Apr. 17, 2001), 66 Fed. Reg. 20,585 (Apr. 24, 2001); Lifting Restrictions on U.S. Relations with the Palestine Liberation Organization, Pres. Determination No. 94-13 (Jan. 14, 1994), 59 Fed. Reg. 4777 (Feb. 1, 1994). In 2010, the President delegated his certification authority to the Secretary of State. *See* Delegation of Certain Functions and Authorities (July 21, 2010), 75 Fed. Reg. 43,795 (July 26, 2010); *see also* 3 U.S.C. § 301.

27, 2017). State further advised that, under the FY 2017 waiver provision, a secondary waiver might be available if the Secretary “determine[d] that the Palestinians ha[d] entered into direct and meaningful negotiations with Israel.” *Id.* State informs us that the PLO still has not returned to meaningful negotiations. *See* State Opinion Request, *supra* note 1, att. at 3.

Although the FY 2017 waiver provision has expired, the FY 2018 waiver provision, which was enacted on March 23, 2018, is materially similar, and the Secretary of State cannot make the required certification.⁶ The Secretary also cannot recommend that the President certify that the PLO, its agents, or its constituent groups no longer practice or support terrorism, so as to invoke the termination provision in section 1005(b) of the ATA.⁷ By its terms, then, section 1003 bars the PLO from maintaining its Washington office or expending any funds to support the PLO’s activities in the United States.

In your April 23, 2018 opinion request, you advised that section 1003 would prevent the President from conducting diplomacy with the PLO and therefore would unconstitutionally encroach upon the President’s exclusive authority to receive ambassadors and to conduct foreign affairs. *See* State Opinion Request, *supra* note 1, att. at 9–11. The State Department believes that it may authorize the PLO to engage in diplomatic activities if, in the judgment of the Executive Branch, those activities would support the United States’ foreign policy objective of fostering a lasting peace between Israelis and Palestinians. The State Department believes that this authority would extend to authorizing the PLO to (1) maintain its Washington office; (2) maintain regular contact with U.S. officials and engage with foreign government interlocutors in Washington on diplomatic

⁶ Congress kept the same general waiver criteria, but modified the ICC condition slightly, requiring certification that the PLO had not “initiated or actively supported an ICC investigation against Israeli nationals for alleged crimes against Palestinians.” Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018, Pub. L. No. 115-141, div. K, § 7041(m)(2)(B)(i)(II), 132 Stat. 348, 833, 911–12.

⁷ The State Department informs us that certain groups (including the Popular Front for the Liberation of Palestine, the Democratic Front for the Liberation of Palestine, and the Palestine Liberation Front) designated as terrorist organizations under Executive Order 12947 (Jan. 23, 1995), 60 Fed. Reg. 5079, 5081 (Jan. 25, 1995), have not sufficiently dissociated from the PLO to allow this certification. State Opinion Request, *supra* note 1, att. at 1 n.1.

matters; (3) report to Palestinian leadership on relevant developments; (4) engage in public diplomacy; and (5) provide financial and administrative support for these activities. *See* May 31, 2018 E-mail, *supra* note 1, att. at 1, 4–8.

On September 10, 2018, the State Department ordered the PLO to close its Washington office. The State Department explained that “the PLO Office is not currently engaged in activities that support the U.S. objective of achieving a lasting, comprehensive peace” and thus that the United States would no longer permit the office to operate. Letter for Husam Zomlot, Chief Representative, General Delegation of the PLO, from Cliff Seagroves, Acting Director, Office of Foreign Missions, Dep’t of State (Sept. 10, 2018).

II.

We agree that Congress may not constitutionally require the PLO to close its office and cease performing other diplomatic activities, should the Executive Branch wish to authorize them. In so doing, section 1003 of the ATA would intrude upon the diplomatic powers that “the Constitution grants to [the President] alone.” *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2084 (2015) (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 638 (1952) (Jackson, J., concurring)). On several prior occasions, this Office has reviewed section 1003 or similar restrictions and advised that they could not constitutionally obstruct the Executive’s ability to facilitate relations with the PLO in the United States. We reach the same conclusion here.

Before the ATA’s enactment in 1987, this Office had advised that two proposed bills similar to section 1003 would have been unconstitutional. *Palestine Information Office*, 11 Op. O.L.C. at 122. We explained that “[t]he right to decide whether to accord to the PLO diplomatic status and what that diplomatic status should be is encompassed within the right of the President to receive ambassadors,” a power “textually committed to the Executive alone.” *Id.* The proposed provisions would be a “serious infringement” on the President’s foreign-affairs authorities because they purported to forbid the President, “as a practical matter,” from “establish[ing] diplomatic relations with the PLO” unless he certified that the PLO had renounced terrorism. *Id.*

Following the enactment of the ATA, we advised that Congress could require the closure of the PLO's U.N. observer mission in New York only because the President had not, to that point, engaged in any relations with the PLO. *See* Memorandum for Edwin Meese III, Attorney General, from Charles J. Cooper, Assistant Attorney General, Office of Legal Counsel, *Re: Intent and Constitutionality of Legislation Prohibiting the Maintenance of an Office of the Palestine Liberation Organization in the United States* at 23–24 (Feb. 13, 1988) (“1988 Cooper Memorandum”). In upholding section 1003, we cautioned that “this is a situation where Congress has power to act so long as the President has not.” *Id.* at 22. The President had not, “in the case of the PLO, chosen to invoke his constitutional authority either to receive ambassadors or to conduct foreign affairs” by “recogniz[ing] the PLO formally,” by “establish[ing] an official relationship with the PLO and with its representatives,” or by taking actions short of recognition whereby the President “permits the alien representatives to enter the United States or conduct negotiations with our representatives.” *Id.* at 20, 22–23 & n.23. If the President chose to take any of these actions, thereby invoking his “exclusive constitutional powers in the area of foreign affairs,” such action would “serve to shield the PLO Mission from the operation of the Act.” *Id.* at 18, 24. Absent such actions, however, section 1003’s restrictions on the PLO did not impair the President’s exclusive authority over diplomacy because those restrictions fell within Congress’s Article I powers and did not interfere with the decision of the Executive Branch not to engage with the PLO.

We agree with those conclusions. The Constitution vests the President with the exclusive authority to conduct diplomacy on behalf of the United States. That authority includes determining whether to recognize a foreign entity as a sovereign and, if not, the degree of relations the United States should maintain with it. That authority also includes the power to receive and expel foreign representatives, and to determine the scope of their diplomatic activities in the United States. If the President chooses to maintain diplomatic contacts with the PLO and to permit the organization to maintain a foreign mission in the United States, then Congress may not intrude on that choice by ordering the closure of the PLO’s Washington office or by prohibiting the PLO from engaging in the diplomatic activities authorized by the Executive Branch.

A.

The President has “unique responsibility” for the conduct of “foreign . . . affairs,” *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 188 (1993), and “the lead role . . . in foreign policy,” *First Nat’l City Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 767 (1972). The Constitution grants the President a host of express powers concerning foreign affairs: to “receive Ambassadors and other public Ministers,” U.S. Const. art. II, § 3, to “make Treaties” and “appoint Ambassadors” with the consent of the Senate, *id.* art. II, § 2, cl. 2, and to exercise authority as Commander in Chief, *id.* art. II, § 2, cl. 1. Congress, too, has powers touching upon foreign affairs, such as the powers “[t]o regulate Commerce with foreign Nations,” “[t]o establish an uniform Rule of Naturalization,” and “[t]o declare War.” *Id.* art. I, § 8. But the Constitution vests in the President “[t]he Executive power,” *id.* art. II, § 1, which includes the “vast share of responsibility for the conduct of our foreign relations” and “independent authority in the areas of foreign policy and national security.” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 414, 429 (2003) (internal quotation marks omitted).⁸

Within this sphere of presidential power, it is “well settled that the Constitution vests the President with the exclusive authority to conduct the Nation’s diplomatic relations with other States.” *Presidential Certification Regarding the Provision of Documents to the House of Representatives Under the Mexican Debt Disclosure Act of 1995*, 20 Op. O.L.C. 253, 267 (1996); *see also id.* at 267 n.41. Although the President and Congress have overlapping authority in some areas, the President has “a unique role

⁸ *See, e.g., Dep’t of the Navy v. Egan*, 484 U.S. 518, 529 (1988) (“The Court also has recognized the generally accepted view that foreign policy [is] the province and responsibility of the Executive.”); *Haig v. Agee*, 453 U.S. 280, 293–94 (1981) (same); *Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2097–2101 (2015) (Thomas, J., concurring in the judgment in part and dissenting in part); *Ludecke v. Watkins*, 335 U.S. 160, 173 (1948) (the President is the country’s “guiding organ in the conduct of our foreign affairs,” and possesses “vast powers in relation to the outside world”); *Kumar v. Republic of Sudan*, 880 F.3d 144, 157 (4th Cir. 2018) (recognizing “the Constitution’s grant to the Executive Branch—not the Judicial Branch—of broad oversight over foreign affairs”); *Nat’l Petrochemical Co. of Iran v. MT Stolt Sheaf*, 860 F.2d 551, 555 (2d Cir. 1988) (“The President alone” is “the constitutional guardian of foreign policy[.]”); 10 Annals of Cong. 613 (Mar. 7, 1800) (statement of then-Rep. John Marshall) (“The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations.”).

in communicating with foreign governments,” and Congress may not compel the President to contradict that message. *Zivotofsky*, 135 S. Ct. at 2090–91, 2095. Thus, in *Zivotofsky*, the Supreme Court held unconstitutional a statute requiring U.S. passports to acknowledge Israeli sovereignty over Jerusalem on the ground that the law intruded upon the President’s exclusive authority to recognize foreign sovereigns. *Id.* at 2085–86. The Court reasoned that “[r]ecognition is a topic on which the Nation must ‘speak . . . with one voice,’” and “[t]hat voice must be the President’s” because “[t]he President is capable, in ways Congress is not, of engaging in the delicate and often secret diplomatic contacts that may lead to a decision on recognition.” *Id.* (quoting *Garamendi*, 539 U.S. at 424) (ellipsis in original). Whereas “the President has the power to open diplomatic channels simply by engaging in direct diplomacy with foreign heads of state and their ministers,” the Court explained, Congress “has no constitutional power that would enable it to initiate diplomatic relations with a foreign nation.” *Id.*

The President’s exclusive authority over diplomacy flows from the text of the Constitution and a long line of “accepted understandings and practice” by all three branches of government. *Id.* at 2091. The President alone decides whether to recognize a foreign sovereign. *Id.* at 2084. The President can “open diplomatic channels” through direct diplomacy, or can instead insist that those channels stay closed. *Id.* The President decides whom to nominate as ambassador and unilaterally “dispatches other diplomatic agents.” *Id.* at 2086. The President “has the sole power to negotiate treaties,” *id.*, and Congress may not require the President to “initiate discussions with foreign nations” or prevent them from occurring, *Earth Island Inst. v. Christopher*, 6 F.3d 648, 652–53 (9th Cir. 1993).⁹ In sum, the President has the sole role in deciding “whether, how,

⁹ *Accord, e.g., United States v. Louisiana*, 363 U.S. 1, 35 (1960) (The President is “the constitutional representative of the United States in its dealings with foreign nations.”); *Prohibition of Spending for Engagement of the Office of Science and Technology Policy with China*, 35 Op. O.L.C. 116, 121 n.2 (2011) (“*OSTP Engagement with China*”) (“[T]he courts, the Executive, and Congress have all concurred that the President’s constitutional authority specifically includes the exclusive authority to represent the United States abroad.”) (quotations omitted); *Statement on Signing the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993* (Oct. 28, 1991), 2 Pub. Papers of Pres. George Bush 1344, 1344 (1991) (“[U]nder our system of government, all decisions concerning the conduct of negotiations with foreign governments are within the exclusive control of the

when, and through whom to engage in foreign diplomacy.” *Legislation Prohibiting Spending for Delegations to U.N. Agencies Chaired by Countries That Support International Terrorism*, 33 Op. O.L.C. 221, 230 (2009) (“*Delegations to U.N. Agencies*”).

Similarly, the President alone determines which foreign agents may come into the United States, how long they may stay, and what diplomatic activities they may carry out while here. The Reception Clause empowers the President alone to “receive Ambassadors and other public Ministers.” U.S. Const. art. II, § 3. And this authority includes whether to accept the request by foreign sovereigns to send particular dignitaries and to assure them of entry. *See Presidential Power to Expel Diplomatic Personnel from the United States*, 4A Op. O.L.C. 207, 208–09, 215 (1980) (“*Presidential Power to Expel Diplomatic Personnel*”). As early as 1793, the Washington Administration considered it self-evident that the President alone would decide when to recognize the new French government and receive its minister. *See Zivotofsky*, 135 S. Ct. at 2091–92; Saikrishna Prakash & Michael Ramsey, *The Executive Power over Foreign Affairs*, 111 Yale L.J. 231, 312–13 (2001) (“Prakash & Ramsey”).

Congress, too, shared this understanding in the early Republic. As the Supreme Court discussed in *Zivotofsky*, in 1818, the House of Representatives took up the question of whether to recognize the new South American republics that had broken away from Spain. 135 S. Ct. at 2092. Speaking in opposition, Representative Alexander Smyth explained, “it is the President who receives all foreign Ministers, and determines what foreign Ministers shall or shall not be received. It is by the exercise of one of these powers, in neither of which has this House any participation, that a foreign Power must be acknowledged.” 32 Annals of Cong. 1569–70 (Mar. 27, 1818). The House voted down the bill and deferred any efforts toward recognition until after President Monroe made that decision, four years later. This episode reflected the early congressional understanding

President.”); *Authority to Participate in International Negotiations*, 2 Op. O.L.C. 227, 228 (1978) (“Negotiation is a necessary part of the process by which foreign relations are conducted, and the power to conduct foreign relations is given to the President by the Constitution.”); Louis Henkin, *Foreign Affairs and the United States Constitution* 42 (2d ed. 1996) (“As ‘sole organ,’ the President determines also how, when, where, and by whom the United States should make or receive [diplomatic] communications” and cannot be “limited as to time, place, form, or forum.”).

that “the recognition power rested solely with the President.” *Zivotofsky*, 135 S. Ct. at 2092.

Likewise, it has been “beyond serious question” that the President’s power to engage with foreign emissaries encompasses the power to expel them from the United States. *Presidential Power to Expel Diplomatic Personnel*, 4A Op. O.L.C. at 209; accord 3 Joseph Story, *Commentaries on the Constitution* § 1562, at 418 (1833) (“Story”) (the President’s reception authority includes “the power to refuse [foreign dignitaries], and to dismiss those who, having been received, become obnoxious to censure, or unfit to be allowed the privilege”). Most famously, in 1793, President Washington demanded the recall of the French minister, Edmond Charles Genet, after Genet embarked on a public campaign to oppose the President’s neutrality policy and win American support for France’s war against Great Britain. Prakash & Ramsey, 111 Yale L.J. at 314–15; Stanley Elkins & Eric McKittrick, *The Age of Federalism* 341–53, 363–65 (1993) (“Elkins & McKittrick”). Genet contended that only Congress could recall diplomats—but the Washington Administration disagreed, and Congress acquiesced in the administration’s position. Prakash & Ramsey, 111 Yale L.J. at 314–15; Elkins & McKittrick at 365. Since then, the Executive has unilaterally decided when to expel foreign representatives. *See generally* 5 John Bassett Moore, *A Digest of International Law*, H.R. Doc. No. 56-551, §§ 700–01, at 19–32 (1906) (“Moore”) (citing over a dozen examples). Accordingly, in 1980, this Office concluded that the President had the authority to expel Iranian diplomats and could do so for any reason. *See* Memorandum for the Attorney General, from Larry A. Hammond, Acting Assistant Attorney General, Office of Legal Counsel, *The President’s Power to Declare Iranian Diplomats Persona Non Grata Because of Their Public Statements* at 1–2 (Mar. 20, 1980).

Congress has accepted the President’s authority over the entry and expulsion of foreign diplomats. For instance, the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, has long exempted diplomatic personnel from its provisions. Congress added this general exemption in recognition of “the constitutional limitations on its ability to control or regulate the President’s constitutional power to receive (and expel) the foreign representatives of countries with whom we have diplomatic relations.” *Presidential Power to Expel Diplomatic Personnel*, 4A Op. O.L.C. at 215; *see also* H.R. Rep. No. 82-1365, at 34 (1952) (explaining that various foreign

diplomats who have been “accepted by the President or the Secretary of State” are generally exempted from provisions relating to admission or removal “[i]n view of constitutional limitations”). On the rare occasions when Congress sought to bar the entry of foreign representatives, Presidents have regularly objected.¹⁰ And for good reason: just as the President’s recognition authority will not tolerate a contradictory message from Congress, *Zivotofsky*, 135 S. Ct. at 2095, the President’s reception authority similarly prohibits Congress from barring the emissaries whom the President wishes to receive.

The President’s foreign-affairs authorities also give him exclusive control over the activities of foreign representatives in the United States. *See, e.g., Tachiona v. United States*, 386 F.3d 205, 213–14 (2d Cir. 2004) (the President possesses the “authority to set the terms upon which foreign ambassadors are received”). Presidents have long set the conditions under which diplomats may operate. For instance, in 1793, Secretary of State Jefferson cautioned Genet that the Executive Branch would “admit the continuance of your functions so long as they shall be restrained within the limits of the law as heretofore announced to you, or shall be of the tenor usually observed towards independent nations by the representative of a friendly power residing with them.” Thomas Jefferson to Edmond Charles Genet (Sept. 7, 1793), 27 *The Papers of Thomas Jefferson* 52–53 (John Catanzariti ed., 1997) (“*Jefferson Papers*”). After the French consuls sought to exercise admiralty jurisdiction in the United States to “try the validity of prizes” seized by privateers, Jefferson directed them to stop

¹⁰ *OSTP Engagement with China*, 35 Op. O.L.C. at 123 (“Presidents . . . have regularly objected to legislation purporting to bar their interaction with particular foreign officials.”); *Statement on Signing the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991* (Feb. 16, 1990), 1 Pub. Papers of Pres. George Bush 239, 240 (1990) (declaring provision restricting the President’s ability to receive spies as ambassadors to be unconstitutional); *Statement on Signing the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996* (Mar. 12, 1996), 1 Pub. Papers of Pres. William J. Clinton 433, 434 (1996) (“A categorical prohibition on the entry of [individuals who confiscate or traffic in expropriated property] could constrain the exercise of my exclusive authority under Article II of the Constitution to receive ambassadors and to conduct diplomacy”); *Statement on Signing the Countering America’s Adversaries Through Sanctions Act*, 2017 Daily Comp. Pres. Doc. No. 559, at 1 (Aug. 2, 2017) (Pres. Trump) (deeming unconstitutional provisions that purported to require the President to “deny certain individuals entry into the United States, without an exception for the President’s responsibility to receive ambassadors”).

and threatened to “immediately revoke[]” the exequaturs that authorized them to operate in the United States. Thomas Jefferson, Circular to French Consuls and Vice-Consuls (Sept. 7, 1793), 27 *Jefferson Papers* at 51. The Washington Administration similarly advised France that any limitations placed on the jurisdiction of U.S. consuls abroad would result in reciprocal limitations on French consuls in the United States. Prakash & Ramsey, 111 *Yale L.J.* at 313. Since then, Presidents have set the conditions under which foreign representatives must operate in the United States.¹¹ This long practice confirms that the President has the sole authority to decide which foreign representatives to receive, what activities they may undertake, and when they must depart.

Congress therefore could not impose restrictions like those in section 1003 upon accredited foreign diplomats in the United States. “[W]hen a Presidential power is ‘exclusive,’ it ‘disabl[es] the Congress from acting upon the subject.’” *Zivotofsky*, 135 S. Ct. at 2095 (quoting *Youngstown*, 343 U.S. at 637–38 (Jackson, J., concurring)); see *OSTP Engagement with China*, 35 Op. O.L.C. at 124–29. Prohibiting representatives of a foreign sovereign from maintaining any office or mission in the United States would be tantamount to prohibiting them from engaging in diplomacy, since missions are “the machinery through which States conduct diplomacy.” Denza, *supra* note 11, at 1. So, too, prohibiting foreign diplomats from expending any funds in the United States for the purpose of furthering their sovereign’s interests would effectively block those diplomats from discharging their duties. The President’s decision to receive a diplomat entails an implicit authorization for the diplomat to perform the

¹¹ See, e.g., 5 Moore § 700, at 20 (noting that in 1855, the Secretary of State threatened to revoke the exequatur of the Portuguese consul in New York if he refused to appear as a witness in prosecuting persons charged with fitting vessels for use in the slave trade); Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* 64 (4th ed. 2016) (“Denza”) (noting that power to expel diplomats “enables the receiving State to protect itself against numerous forms of unacceptable activity by members of diplomatic missions and forms an important counterweight to the immunities conferred elsewhere”); *id.* at 409 (describing State Department practices of “cutting of telephone lines, refusal of customs clearance for diplomatic imports, and refusal of permission to purchase private residences” that were taken against the missions of the Soviet Union, China, Czechoslovakia, Iran, Vietnam, and Cambodia); *id.* at 410 (“The Department of State systematically monitors tax exemptions granted to U.S. missions abroad and adjusts the privileges accorded to missions in the United States so as to ensure a high level of reciprocity.”).

customary incidents of diplomatic office, unless the President chooses to modify the scope of that authorization.

B.

The President's exclusive authority over diplomatic affairs extends as well to foreign political organizations, such as the PLO. Because the President's "exclusive and plenary" powers to "receive emissaries from a foreign entity" and to recognize foreign sovereigns "need not be exercised concurrently," the "President's decision to engage in diplomatic activity . . . does not obligate him to recognize the state sending those representatives." 1988 Cooper Memorandum at 22–23 n. 23. Nor must the President accept emissaries as accredited diplomats to invoke his foreign-affairs authorities. The President's reception power extends to "all possible diplomatic agents which any foreign power may accredit to the United States." *Ambassadors and Other Public Ministers of the United States*, 7 Op. Atty. Gen. 186, 209 (1855).¹² So the President may authorize foreign emissaries to enter the United States and engage in diplomatic relations without affording them diplomatic status. The Supreme Court has recognized the President's diplomatic authority includes such informal diplomatic channels. *United States v. Belmont*, 301 U.S. 324, 330 (1937) (it "may not be doubted" that it was "within the competence of the President" alone to engage in negotiations with the Soviet Union before its recognition); see *Zivotofsky*, 135 S. Ct. at 2086 ("The President is capable, in ways Congress is not, of engaging in the delicate and often secret diplomatic contacts that may lead to a decision on recognition."). This Office thus previously concluded that the President has the sole authority to "decide whether to accord to the PLO diplomatic status and what that diplomatic status should be." *Palestine Information Office*, 11 Op. O.L.C. at 122.¹³

¹² For instance, at the Founding, consuls were "not diplomatic functionaries, or political representatives of a foreign nation," but were "treated in the character of mere commercial agents." 3 Story § 1559, at 415. Yet, Justice Story explained, the President's sole authority to receive them "has constantly been exercised without objection; and foreign consuls have never been allowed to discharge any functions of office, until they have received the exequatur of the president." *Id.*

¹³ See also *Section 609 of the FY 1996 Omnibus Appropriations Act*, 20 Op. O.L.C. 189, 194 (1996) ("The Executive's recognition power necessarily subsumes within itself

Since the Founding, Presidents have received and negotiated with representatives from non-sovereign entities. From 1796 to 1800, following an uprising in the French colony of Saint-Domingue, President Adams accepted agents of the provisional government of Toussaint L'Ouverture. The Adams administration did not recognize L'Ouverture's government or grant his agents diplomatic status, but negotiated with them over trade. See Rayford W. Logan, *The Diplomatic Relations of the United States with Haiti 1776–1891*, at 73–76, 105 (1941). Likewise, as other Latin American colonies edged towards independence in the nineteenth century, Presidents Madison, Monroe, and Quincy Adams authorized provisional governments to send agents and received them on an informal basis. Samuel Flagg Bemis, *Early Diplomatic Missions from Buenos Aires to the United States 1811–1824*, 49 Proc. of Am. Antiquarian Soc. 11, 12–13, 55 (Apr. 1939) (“Bemis”); Julius Goebel, Jr., *The Recognition Policy of the United States* 121, 134, 138 (1915) (“Goebel”). Some of these agents remained in the United States for decades to lobby for recognition. Bemis, 49 Proc. of Am. Antiquarian Soc. at 21, 93.

Long before recognizing the Soviet Union, the Executive Branch allowed unofficial Soviet representatives into the United States. In 1921, during the Russian Civil War, the State Department authorized the short-lived Far Eastern Republic—an entity later subsumed within the Soviet Union—to send “responsible persons of good record to whom the Department would extend informal assistance but no official recognition.” Svetlana Chervonnaya & Donald Evans, *Left Behind: Boris E. Skvirsky and the Chita Delegation at the Washington Conference, 1921–22*, 29 Intel. & Nat'l Sec. 19, 26 (2014) (internal quotations omitted). That delegation included Boris Skvirsky, who established the Soviet Union Information Bureau, negotiated with U.S. officials, and engaged in public diplomacy as the Soviet Union's unofficial diplomatic representative for

the power to withhold or deny recognition, to determine the conditions on which recognition will be accorded, and to define the nature and extent of diplomatic contacts with an as-yet unrecognized government.”); *Nat'l Petrochemical Co. of Iran*, 860 F.2d at 554–55 (“[T]he power to deal with foreign nations outside the bounds of formal recognition is essential to a president's implied power to maintain international relations,” and “the president alone—as the constitutional guardian of foreign policy—knows what action is necessary to effectuate American relations with foreign governments.”).

more than a decade, *id.* at 27, 51, while occupying the “legal status of a private citizen,” *id.* at 50 (internal quotations omitted).

During World War II, President Roosevelt admitted Charles de Gaulle, the leader of the French Committee of National Liberation, to the United States for meetings while avoiding recognizing either de Gaulle or the Vichy regime as the legitimate government of France. 2 Marjorie M. Whiteman, *Digest of International Law* § 5, at 129 (1963). The Executive Branch likewise authorized the People’s Republic of China to open an unofficial liaison office and granted its representatives certain diplomatic privileges and immunities before recognizing the Communist Chinese government. 2 Jerome Alan Cohen & Hungdah Chiu, *People’s China and International Law: A Documentary Study* 1108 (1974). And the Executive Branch permitted breakaway entities like Katanga and Rhodesia, which never attained recognition, to open unofficial U.S. offices and to take actions in the United States to advance their political interests. See Josiah Brownell, *Diplomatic Lepers: The Katangan and Rhodesian Foreign Missions in the United States and the Politics of Nonrecognition*, 47 *Int’l J. of African Hist. Stud.* 209, 213–14, 226–27, 230 (2014).

Congress too has acknowledged the President’s authority to engage in diplomacy with non-sovereign entities. The Foreign Missions Act defines a “foreign mission” on U.S. soil to include “any mission to or agency or entity in the United States which is involved in the diplomatic, consular, or other activities of” either (i) “a foreign government,” or (ii) “an organization . . . representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under [U.S. law] or which engages in some aspect of the conduct of the international affairs of such territory or political entity.” 22 U.S.C. § 4302(a)(3). The statute grants the Secretary of State the discretion to determine which organizations constitute a “foreign mission.” *Id.* § 4302(b). Under the Foreign Missions Act, Presidents have authorized the PLO and other foreign entities to open offices and engage in diplomatic activities in the United States.¹⁴

¹⁴ See, e.g., National Coalition of Syrian Revolution and Opposition Forces, 79 Fed. Reg. 27,675 (May 14, 2014) (determining that the offices of the National Coalition of Syrian Revolution and Opposition Forces constitute a foreign mission); Taipei Economic and Cultural Offices, 79 Fed. Reg. 16,090 (Mar. 24, 2014) (determining that the Taipei Economic and Cultural Representative Office in Washington, D.C., and its subsidiary

Similarly, this Office has often concluded that the President's exclusive authority over diplomatic affairs extends to representatives of non-recognized foreign entities. For instance, in 1977, President Carter sought to close Rhodesia's unofficial U.S. office in view of his Administration's foreign policy and a recent U.S.-sponsored United Nations Security Council resolution. This Office advised that, notwithstanding the mission's lack of diplomatic status, its closure fell within the President's exclusive foreign-affairs powers, including "the right to determine who is to be regarded here as representing a foreign state or regime." Letter for the President, from John M. Harmon, Assistant Attorney General, Office of Legal Counsel att. 2, at 7 (Dec. 13, 1977).

This Office also objected to a bill that would have required the Secretary of State to permit the entry of the President of Taiwan to the extent it could be "construed to prevent the President from denying [him] permission to enter the United States." Memorandum for the Files, from Richard Shiffrin, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: H.R. 1460*, at 2 (May 18, 1995). The United States did not recognize Taiwan as a foreign sovereign, the Clinton administration had not decided whether to grant the Taiwanese President diplomatic status, and the Taiwanese President merely sought entry to speak at Cornell University. *Id.* at 1–2. Nonetheless, we concluded that Congress could not require the President to admit him, because doing so "would undermine the President's recognition policy toward" the People's Republic of China. *Id.* at 2–3.

These precedents leave little doubt that Congress may not interfere with the President's authority to engage in diplomatic contacts with non-recognized entities. Foreign political entities that engage with the United States are engaged in diplomacy even if they never attain recognition. If the President did not have the exclusive authority to set the parameters of United States engagement, then Congress could thwart the President's authority to recognize such entities or to calibrate the nature of relations with them. The authority to engage with foreign entities in the United States therefore falls well within the President's exclusive authority.

offices throughout the United States constitute foreign missions); Amtorg Trading Corporation, 52 Fed. Reg. 5,373 (Feb. 20, 1987) (authorizing the *de facto* Soviet trade delegation to operate a mission).

This conclusion is consistent with the course of United States relations with the PLO. Although the United States has never recognized the PLO as a foreign sovereign, the United States maintained relations with the PLO for over two decades, and Presidents have repeatedly objected to legislative efforts to cabin such engagement.¹⁵ Since 1994, Presidents have engaged with the PLO as the international representative of the Palestinian people. *See* State Opinion Request, *supra* note 1, att. at 1. The State Department authorized the PLO to maintain a foreign mission in Washington, D.C., in the expectation that PLO representatives should “have ready access to State Department officials on matters of mutual concern” and be “invited to official U.S. functions on a case by case basis.” Boswell Letter at 2. If the Executive Branch wishes to authorize the PLO to conduct such diplomatic activities, Congress may not constitutionally bar such engagement.

C.

The President’s exclusive authority over diplomatic affairs necessarily implies the discretion to permit the PLO to maintain a mission within the United States. Since the early days of the Nation, the Executive Branch has allowed non-recognized entities to send agents to the United States to reside on a long-term basis and establish diplomatic contacts. Forbidding these entities from establishing an office from which to operate would cut off a critical conduit for such relations. *Cf.* Denza, *supra* note 11, at 1 (missions are “the machinery through which States conduct diplomacy”).

¹⁵ *See supra* note 4; *accord, e.g., Delegations to U.N. Agencies*, 33 Op. O.L.C. at 232 (“[T]he Executive Branch has objected numerous times on constitutional grounds to legislative provisions purporting to preclude any U.S. government employee from negotiating with (or recognizing) the [PLO] or its representatives until the PLO had met certain conditions.”); *Statement on Signing the Consolidated Appropriations Act, 2012* (Dec. 23, 2011), 2 Pub. Papers of Pres. Barack Obama 1568, 1569 (2011) (prohibition on establishing an office in Jerusalem for the purpose of conducting official business with the Palestinian Authority would “hinder my ability to receive diplomatic representatives of foreign governments”); *Statement on Signing the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991* (Feb. 16, 1990), 1 Pub. Papers of Pres. George Bush 239, 240 (1990) (objecting to a statute prohibiting the use of any funds to continue “the current dialogue on the Middle East peace process” with any PLO representatives known to have been directly involved in terrorist activity because such a prohibition interferes with the President’s “constitutional authority to negotiate with foreign organizations”).

Therefore, at a minimum, Congress may not prohibit the PLO from maintaining an office dedicated to conducting relations with the United States should the Executive seek to facilitate such relations.

The question remains whether additional PLO activities fall within the President's exclusive authority over diplomacy. In light of the State Department's expertise in this area, we give great weight to its views regarding whether particular activities are diplomatic in nature. *See Issues Raised by Provisions Directing Issuance of Official or Diplomatic Passports*, 16 Op. O.L.C. 18, 21 (1992) ("defer[ring] to the State Department's expertise" concerning the foreign policy consequences of a proposed bill); *OSTP Engagement with China*, 35 Op. O.L.C. at 125 (relying on the State Department's judgments as to how integral particular activities are to the conduct of diplomacy); *Delegations to U.N. Agencies*, 33 Op. O.L.C. at 235 (deferring to the State Department's conclusion that a legislative restriction on its participation in negotiations would undermine U.S. diplomacy); *cf. United States v. Al-Hamdi*, 356 F.3d 564, 571–72 (4th Cir. 2004) (treating the State Department's views as conclusive regarding whether a foreign representative possesses diplomatic status in light of the President's foreign-affairs authorities). We also consider whether these activities constitute a necessary incident of diplomacy by looking to the historical practices of the Executive Branch. *See Zivotofsky*, 135 S. Ct. at 2091 (examining "accepted understandings and practice").

Based on these criteria, we believe that the specific activities that the State Department identified are necessary incidents of engaging the PLO in diplomatic contact with the United States. The State Department may authorize the PLO to meet with U.S. and foreign officials in the United States. Indeed, the whole point of allowing a foreign representative to enter the United States and establish an office is to foster such contacts, whether they are with representatives of the U.S. government or with members of the foreign diplomatic corps. *Cf. OSTP Engagement with China*, 35 Op. O.L.C. at 125 (Congress has no authority to limit meetings between U.S. and Chinese officials abroad because such contacts "fall squarely within the scope of the President's constitutional authority to engage in discussions with foreign governments").

Likewise, the State Department may authorize the PLO's Washington office to communicate with its leadership abroad. There would be few surer ways of thwarting the President's diplomatic efforts than to bar

foreign representatives from reporting on developments within the United States. *Cf.* Denza, *supra* note 11, at 29 (“The function of a diplomatic mission” includes “report[ing] to the sending government on all matters of importance to it”); Vienna Convention on Diplomatic Relations art. 3.1(d), Apr. 18, 1961, 500 U.N.T.S. 95, 98 (functions of diplomatic missions include “[a]scertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State”); 2 Foreign Affairs Manual (“FAM”) 113.1.c.10 (responsibilities of a U.S. Chief of Mission include “reporting significant political, economic, and societal developments occurring abroad”).

The State Department also identified various forms of public diplomacy—namely, “outreach to Palestinian-Americans, Palestinians in the United States, or interested Americans on matters relevant to the Palestinian community.” May 31, 2018 E-mail, *supra* note 1, att. at 7. That, too, is a typical and accepted incident of diplomacy. *See, e.g.*, Vienna Convention on Diplomatic Relations art. 3(b), (c) (the functions of a diplomatic mission include “[p]rotecting in the receiving State the interests of the sending State and of its nationals” and “[p]romoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.”); Richard T. Arndt, *The First Resort of Kings: American Cultural Diplomacy in the Twentieth Century* 12–15 (2005) (upon their reception as the United States’ earliest ambassadors to France, Benjamin Franklin and later Thomas Jefferson published information and engaged with influential French citizens in an effort to correct misimpressions about America); *accord, e.g.*, 1 FAM 114.2 (describing functions of “[a] bureau’s public diplomacy office”). Representatives of non-recognized entities have long been permitted to pursue such activities in the United States. In 1835, for example, Texas declared independence from Mexico and the provisional government sent three commissioners here, in part to enlist “public sympathy” for their cause. Goebel at 145. In the twentieth century, representatives of the Soviet Union, Rhodesia, and Katanga likewise engaged in extensive public diplomatic efforts in the United States in support of their governments. *See supra* p. 17.

Logistical and financial services provided to support PLO representatives’ official trips to meet with high-level U.S. officials are also necessary incidents of diplomacy. *Cf. OSTP Engagement with China*, 35 Op.

O.L.C. at 127 (activities “necessary to carry out meaningful diplomatic initiatives” fall within the President’s exclusive authority over diplomacy). Without such support, those diplomatic trips might not happen. *Cf. id.* (Congress could not restrict U.S. officials’ preparation and logistical support for diplomatic meetings, including the arrangement of travel and lodging). For similar reasons, financial and administrative activities related to diplomatic efforts, such as maintaining bank accounts and paying bills, are necessary incidents of diplomacy. Just as the President could not conduct diplomacy abroad without the ability to make “expenditures [necessary] for preparation, support, and facilitation of diplomatic discussion,” *id.*, depriving foreign representatives of the ability to perform these basic functions would prevent them from operating in our country. We therefore conclude that section 1003 may not prohibit such diplomatic activities if the Executive Branch wishes to authorize them.

In reaching this conclusion, we are mindful that the Executive Branch has at times acted consistently with section 1003’s restrictions. For example, in authorizing the PLO’s Washington mission in 1994, the State Department instructed the PLO that the mission could stay open only if the President could continue complying with the ATA waiver provision. *See Boswell Letter* at 1. And in 1997, State directed the PLO to suspend its Washington office because Congress had allowed the statutory waiver authority to lapse. *See Letter for Hasan Abdel Rahman, Chief Representative, Palestine Liberation Organization, from Eric J. Boswell, Assistant Secretary of State for Diplomatic Security* (Aug. 8, 1997).

At the same time, we must judge those episodes against the broader executive practice. Those episodes may well reflect the Executive Branch’s determination that compliance with section 1003 would support the President’s diplomatic objectives or his efforts to win support for a renewed waiver authority. *See, e.g., Zivotofsky*, 135 S. Ct. at 2107 (Thomas, J., concurring in part and dissenting in part) (“[T]he argument from Presidential acquiescence here is particularly weak” where the “statute is consistent with the President’s longstanding policy”); *Haig v. Agee*, 453 U.S. 280, 302 (1981) (“[T]he continued validity of a power is not diluted simply because there is no need to use it.”). Moreover, those episodes must be considered against the Executive Branch’s repeated objections to the actual or potential burdens imposed by section 1003, including this Office’s two opinions on the subject, President Reagan’s 1987 signing

statement, and statements of Presidents since objecting as a matter of constitutional principle to the ATA and similar restrictions.

We also do not dispute that some of section 1003's prohibitions may otherwise be justified as regulations of commerce within the United States. Congress has the authority under Article I to regulate any non-diplomatic activities conducted by the PLO, but those measures may not invade the President's exclusive authority over diplomacy.¹⁶ In addition, although Congress has reduced section 1003's potential for interference by permitting the President to waive section 1003's prohibitions, that waiver provides no help if its conditions are not met and the Executive Branch wishes to authorize the PLO's Washington office to remain open and to engage in particular diplomatic activities. To the extent that the conditions for the waiver stand in the way, Congress may not "burden or infringe the President's exercise of a core constitutional power by attaching conditions precedent to the exercise of that power." *Placing of United States Armed Forces Under United Nations Operational or Tactical Control*, 20 Op. O.L.C. 182, 186–88 (1996) (concluding that a provision allowing the President to waive a restriction on national security grounds with advance notice to Congress was insufficiently protective of his exclusive authority to control when and where to deploy U.S. forces). Congress has not granted the President the authority to waive section 1003 for purely diplomatic reasons, and the provision therefore impermissibly constrains the President's exclusive authority over the conduct of diplomacy.

In sum, if the President chooses to allow the PLO to pursue diplomatic endeavors in the United States, then Congress may not impede that decision. For that reason, we informally advised the State Department that the PLO's Washington office could remain open between November 2017 and September 2018. By the same token, if the President determines that

¹⁶ See, e.g., *OSTP Engagement with China*, 35 Op. O.L.C. at 124 (although "Congress may use its spending power to decline to appropriate money or place conditions on its appropriations," it cannot use that power to circumvent the President's exclusive foreign-affairs authorities); *Delegations to U.N. Agencies*, 33 Op. O.L.C. at 237 ("[T]he Executive Branch has long adhered to the view that Congress cannot use the appropriations power to control a Presidential power that is beyond its direct control." (citations and quotation marks omitted)); *The President's Compliance with the "Timely Notification" Requirement of Section 501(b) of the National Security Act*, 10 Op. O.L.C. 159, 169–70 (1986) (similar).

closing the PLO office and enforcing section 1003's restrictions is in the interest of United States foreign policy, that action too would fall within his exclusive authority over the conduct of diplomacy. *See* 1988 Cooper Memorandum at 22; *supra* note 4. On September 10, 2018, the Executive Branch made that determination, and the PLO's Washington office must now cease operating unless or until the President deems it within the interest of the United States to reopen.

III.

For the foregoing reasons, we advised that Congress could not require the Secretary of State to close the PLO's Washington office or to prohibit the PLO from performing the diplomatic activities described in this opinion.

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