



## Response to "IPF Memo on H.R.5344"

The indexing below corresponds to that in the IPF memo titled "IPF Memo on H.R.5344."

### 1. End Use Restrictions on US Aid

- a. Opposition to the bill's provision on end use restrictions is IPF's "central reason" for not supporting the Two-State Solution Act. Without any evidence or substantiation of any kind, the IPF memo asserts that further end use restrictions on US aid would harm Israeli and US interests, cause Israel to "dig in its heels" and reduce US leverage. Looking at actual facts, however, one can see that leveraging aid to partner countries is a tool that the United States has used -- including with Israel -- and continues to use around the world to address policies and actions which undermine American interests.

As the bill itself notes, the United States has explicitly delineated appropriate uses of aid to Israel since the Eisenhower administration. Congress has legislated specific end use restrictions on aid to a range of partner countries. Just this year, the Biden Administration added further restrictions on aid to Egypt. Does IPF feel that these use restrictions cause those countries to dig in their heels, hurt US interests or reduce US leverage? If not, what is unique about Israel that IPF feels would result in an opposite outcome? What examples can IPF give for its unsupported conclusions?

What has been proven is that \*declining\* to apply end use restrictions, as the IPF memo advocates, in response to increasing settlement expansion, demolitions and other acts of de facto annexation in recent years, is totally ineffective in stopping such moves, thereby undermining US interests and the prospects for a two-state solution.

- b. The IPF memo asserts that it would be too complicated to determine what Israeli behavior does and does not further "the exercise of permanent control by Israel over any part of the occupied Palestinian territories." Yet use restrictions of similar specificity currently exist in US law. For example, US law restricts aid to Azerbaijan from being used to "undermine or hamper ongoing efforts to negotiate a peaceful settlement between Armenia and Azerbaijan or be[ing] used for offensive purposes against Armenia." Similarly, the Arms Export Control Act (AECA) prohibits the provision of arms to a foreign country for purposes other than "legitimate self-defense" and other enumerated uses.

The IPF memo then questions whether the bill's end use restrictions would prohibit the use of US-funded equipment in order to track down and apprehend the perpetrators of an attack against Israeli civilians in the West Bank -- which a plain reading of the bill

makes clear they would not. Nothing in this bill would impinge on Israel's ability to defend itself or its citizens, per the explicit AECA language related to self-defense referenced above, or from using US-funded equipment anywhere in the world it needed to in order to do so, including in the West Bank.

- c. The IPF memo asserts that the bill can only be enforced by conditioning aid to Israel. This is false. If the bill were to become law, it would be incumbent upon the US government to be vigilant about end-use monitoring to be sure materiel funded by US aid isn't used in a way that violates the law. In fact, the bill makes clear that's something the United States should already be doing now. The Arms Export Control Act already specifies that the administration must notify Congress when a "substantial violation" of the AECA's use restrictions "may have occurred." According to the State Department, "A report would not make a country ineligible for further security assistance unless the President so determines and reports to Congress, or Congress enacts specific legislation." The US government has a full range of diplomatic and other tools at its disposal to encourage compliance with the bill's requirements short of conditioning aid.

The IPF memo then oddly asserts that because US assistance could be used to purchase equipment that is multi-use, equipment that is used for impermissible purposes is also likely to be used for permissible purposes. For supporters of the bill, that fact gets to the very heart of exactly why these end use restrictions are both necessary and would \*enhance\* Israel's security, as they help ensure that equipment bought with our aid is only used for legitimate defense purposes, rather than diverted to illegitimate purposes which deepen the conflict and undermine a two-state peace.

What is most troubling about this part of the IPF memo's analysis is that it seems to just accept that Israel may be using US-funded equipment for illegitimate purposes, while proposing no means of preventing that from happening. Simply allowing the use of US aid in connection with settlement expansion, demolitions and other such acts is not a tenable position for those who support the enforcement of existing US law and the objective of a two-state solution.

## **2. Impact on the Anti-Terrorism Act**

- a. The IPF memo asserts that Section 8 of the bill would undermine US government messaging on the importance of the Palestinians ending their prisoner's payment program. This criticism likely stems from a significant misreading of the bill, which, in fact, expressly endorses and incentivizes Palestinian compliance with the Taylor Force Act that mandates an end to the current prisoner payments program. It's also possible that in referring to "the grievances of the families of Americans killed by Palestinian terrorists," the IPF memo may be hinting that the bill would have an impact on the Anti-Terrorism Clarification Act, as amended, governing suits brought by the families of

American victims of Palestinian terrorism, but that is a completely different area of law which this bill would not modify in any way.

- b. The IPF memo asserts that the bill amends the Anti-Terrorism Act to trigger an automatic termination of the Act if the president determines that “the Palestine Liberation Organization, its agents, or constituent groups thereof no longer practice or support terrorist actions anywhere in the world.” It is false that the bill amends the Act to include this termination language, because this precise termination language has been in the Act and binding US law for 34 years, since 1987. While IPF may be confused about this language, it was clear enough for the 100th Congress and President Reagan to enact into law.
  
- c. The IPF memo then demands a new condition on termination of the Anti-Terrorism Act, specifically, in its words, “an explicit provision about the ICC, given that trying to establish a Palestinian state through ICC sanctions [sic] runs counter to the US policy of a two-state outcome through negotiations between the two sides...” It is unclear precisely what new statutory condition IPF is proposing here, but dragging existing US law well to the right of where Congress and Ronald Reagan set it by demanding Palestinians forswear their right to peacefully seek redress under international law (the ICC, of course, cannot force Israel or anyone else to recognize a Palestinian state nor end the Israeli-Palestinian conflict) isn't helpful to the prospects for a two-state solution. Just like this bill doesn't demand specific resolution of every problematic Israeli action, it doesn't prescribe outcomes on the full range of steps taken by the Palestinians.

### **3. Alleged Lack of Consensus**

The final section of the IPF memo asserts that the bill would fail to get both sides to move in a productive manner and that its provisions lack consensus among US lawmakers. Mostly comprised of generic aspirational language, this part of the memo again fails to provide any substantive evidence or actual suggestions for meaningful steps.

More importantly, however, the memo fails to take into account that the policies set forth in the bill had been the bipartisan, consensus position of the US government for decades. Opposition to settlement expansion and deepening occupation, leveraging US aid to discourage actions that ran counter to US interests, and productive bilateral relations with the Palestinians were once positions taken by Democratic and Republican administrations alike. This bill expressly reaffirms and seeks to enforce that longstanding US policy in support of two states through concrete action. Inaccurately casting this bill as deviating from mainstream positions only contributes to the further erosion of the US consensus on two states. We encourage those who are tired of mere lip service being paid to a two-state solution by the same people who spend time and effort blocking actual steps toward it to join us in support of this legislation.