

MEMORANDUM

To: Members of Congress

From: Democratic Majority for Israel

Date: October 18, 2021

Re: The Problematic Realities Behind the Two State Solution Act

Democratic Majority for Israel strongly supports a two-state solution to the Israeli-Palestinian conflict and has opposed both new settlements, and annexation. Nonetheless, we issued a [statement](#) after the so-called “Two State Solution Act” ([H.R.5344](#)) was introduced, briefly delineating some of our objections to that legislation, which we think will prove counterproductive the goal we share — a two state solution.

J Street issued a critique of our statement that importantly ignores the facts.

Our analysis of the flaws and failings of the legislation, as well as J Street’s response:

- We concluded that the bill “blames Israel alone for the failure to achieve a two-state solution,” a characterization to which J Street objects, saying, “Nowhere does the bill lay the blame for failure to achieve a two-state solution on either party.” So, we agree on this much — the bill does not blame the Palestinians.
- Does it blame Israel? The bill refers to one, and only one, action as “an obstacle to peace”: Israeli settlements.
 - The bill mentions in passing Hamas’ missile attacks against Israel (with no reference to the scope, scale, or duration of those attacks — over 20,000 rockets since Israel withdrew from the enclave in 2005) but does not label the attacks “an obstacle to peace.”
 - It does not mention that Hamas, which controls Gaza, defines the destruction of Israel as its goal and does not label that objective “an obstacle to peace.”
 - It does not mention repeated refusals by the Palestinian leadership to accept Israeli offers of a Palestinian state, nor characterize them as an obstacle to peace. After one of those instances President Clinton said, “I killed myself to give the Palestinians a state. I had a deal they turned down...”
 - It does not label incitement to violence by the Palestinian Authority (PA) an obstacle to peace, even though the European Union (not Israel’s strongest

advocate) recently concluded textbooks used by the PA contain “hate speech” and “incitement to violence.”¹

- It does not label Palestinian action against Israel in the International Criminal Court (to which neither the U.S., Israel, nor the PA are proper parties) an obstacle to peace.
- It does not label Hamas’ refusal to return the bodies of Israeli hostages (living and dead) as an obstacle to peace.
- The bill also identifies only one party — Israel — as violating international law. It does not label missile attacks on Israel, refusal to return dead bodies, or terrorism as legally problematic, despite the fact that they are war crimes.
 - Are Israeli settlements an obstacle to peace as this bill claims? They may be *an* obstacle to peace, but they are certainly not *the* only one, nor even the most important one.
 - Five Arab armies invaded Israel as it was created, in 1948, long before there were West Bank settlements.
 - The PLO was founded and began committing terrorist acts in 1964, again before West Bank settlements existed.
 - Israel has demonstrated its willingness to give up settlements for peace. Israel evacuated every settlement in the Sinai (18 settlements, 2 air force bases, a naval base, and more), returning them to Egypt as part of its peace treaty with that country.
 - Israel unilaterally evacuated every soldier and all of its 21 settlements from Gaza, in an attempt to make peace. The result: Since then, over 20,000 rockets have been fired at Israel from Gaza.
 - In fact, Israel has returned nearly 90% of the territory it captured during its war for survival in 1967.
- While settlements may be *an* obstacle to peace, surely the actions by the Palestinian Authority and, much more so, by Hamas, noted above are more serious obstacles to peace. But only Israeli settlements are referred to as “an obstacle to peace” in the text of this bill.
- Blame is a subjective judgement, but because the actions of only one side are identified as “obstacles to peace” or “violations of international law,” we think

¹ <https://tinyurl.com/Textbooks-PA-EU>

it's more than reasonable to conclude "The bill wrongly blames Israel alone for the failure to achieve a two-state solution."

- We argued that while the bill imposes specific demands and conditions on Israel, it "makes zero demands of the Palestinians." J Street labels that "untrue" though a thorough read of the legislation makes clear that our understanding is correct.
 - For example, J Street contends that the bill "explicitly...proposes steps to address the Palestinian Authority's violations of human rights and civil liberties, official corruption, and poor governance as well as Hamas' poor governance and terrorism..."
 - What are the "steps" proposed? Twenty million dollars a year in U.S. grants to "private, nonprofit organizations to support programs that promote human rights, democracy, and the rule of law..." A fine idea perhaps, but hardly a demand or condition being imposed on the PA or Hamas.
 - We say "perhaps" only because Hamas and the PA are authoritarian kleptocracies—Hamas far more problematic than the PA. The bill explicitly states the money cannot be given directly to the PA or Hamas but fails to recognize that Palestinian law allows the PA to close down any NGO and seize its assets, a fate that has already befallen some 100 such organizations.² There is no rule of law in Gaza at all.
 - The claim that grants to NGOs are serious "steps to address fir[ing] rockets at Israeli population centers, resulting in deaths of civilians" is absurd.
 - J Street also claims the bill "strengthens existing law concerning U.S. relations with the Palestinians to combat incitement." Equally absurd.
 - In fact, the bill addresses incitement in only one place—by allowing the PLO to open an office in the U.S. if, among other conditions, the organization "is not objecting to any convening of the Trilateral Anti-Incitement Committee..."
 - You may not be familiar with this entity as it last met 21 years ago, after functioning for only two years. It accomplished nothing and nothing in this bill makes it more likely to succeed.
 - Is there a demand here on the Palestinians?

Merely that they not object to a committee which has not met in two decades. Not that they stop official glorification of terrorist

² <https://www.pcdcr.org/en/the-relation-between-civil-society-institutions-and-the-palestinian-authority/>

murderers. Not that they change textbooks that incite violence, not that PA officials cease inciting violence. Not even that they participate in this moribund committee. Only that they do not object to its convening.

- The bill pays grudging respect to the Taylor Force Law, recognizing that while unlike Hamas, the PA does not direct violence against Israel, the PA is paying special salaries and benefits to terrorists. But this legislation does not label this pay-for-slay program an obstacle to peace, nor demand it be stopped.
 - Rather the bill merely expresses “the sense of Congress that...the Palestinian Authority should reform its payments program in a manner that would allow the Secretary of State to issue the certification.”
 - No moral outrage, no demand that pay-for-slay be stopped — rather a request for just enough “reform” to circumvent the law’s requirements.
 - Indeed, the clear sense of Congress is not that pay-for-slay should be *reformed*. Rather the law Congress passed, by overwhelming bipartisan majorities, demands that the PA *end* special payments to terrorists and their families.
- The bill clearly imposes new restrictions on U.S. aid to Israel — an idea President Biden called “outrageous” and a “gigantic mistake.”
 - It does so under the guise of preventing annexation of territory in the West Bank, despite the fact that Israel has publicly abjured such intentions in the Abraham Accords it signed with Arab states.
 - The bill also prohibits using U.S.-funded equipment to “support unilateral efforts to...exercise permanent control by Israel over any part of the occupied Palestinian territories...”
 - While the legislation delineates some examples of efforts to exercise “permanent control,” it does not limit the definition in any way. J Street believes Israel is already acting to exercise permanent control over these areas. So, as far as they are concerned, the use of U.S.-funded military equipment could be prohibited in any effort by the Israeli military in the West Bank or Gaza. For example, this bill could have prevented Israel from using American equipment in searching for the six terrorist murderers who escaped from prison a few weeks ago.

- There are also cities in the West Bank that everyone agrees will remain in Israel in any two-state map, a fact acknowledged by the U.S. government. This bill would prevent Israel from using affected equipment to defend thousands of Israeli citizens against attack who already live in those locales.
- Which brings us to the issue of definitions and history. The bill defines the West Bank, Gaza, and East Jerusalem as “Palestinian territories.” But what exactly does this mean?
 - All of Israel sits to the west of the Jordan River. Is all of Israel the “West Bank”? That may seem like mindless quibbling. Yet, PLO officials have repeatedly made clear that they consider all the land “From the (Jordan) River to the (Mediterranean) Sea” as “occupied Palestinian territory” that Israel must leave. Some American based organizations and members of Congress have recently adopted that view, so the borders of the West Bank are far from a trivial concern.
 - Moreover, this bill defines East Jerusalem as occupied, even though it has been part of a united Israeli city since it was captured from Jordan after that country refused pleas from Israel not to attack in 1967. Refusing to allow the Israeli armed forces to defend the people of Jerusalem is ludicrous.
- By referring to these territories as “Occupied Palestinian Territories,” the bill reinforces a false historical narrative. It wrongly suggests that there was once a Muslim country called Palestine that Israel invaded and took over. Polling finds that a majority of progressive activists believe this completely false version of history. The West Bank has been ruled by Jews, Romans, Mamluks, Seljuks, Ottoman Turks, and others, but never by Palestinian Arabs.
- Before our detractors jump to conclusions, this is not an argument against a Palestinian state. We believe Palestinians also have legitimate claims and wholeheartedly endorse the creation of a Palestinian state, despite the fact that Palestinian Arabs have never exercised sovereignty. But we don’t believe that using legislation to peddle bogus versions of history is an appropriate means to achieve that end.

As President Biden made clear, “Until the region says, unequivocally, they acknowledge the right of Israel to exist as an independent Jewish state, there will be no peace.”

A two-state solution and a lasting peace require recognition of Israel and a negotiated agreement. To think that the U.S. can impose that agreement by restricting aid to Israel is fundamentally flawed. Indeed, it will make that outcome much less likely.