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Political Participation and Palestinian Legislative Elections

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In the leadup to Palestinian president Mahmoud Abbas's October 20 visit to Washington, the Bush administration urged the Palestinian Authority (PA) to tighten rules enacted in 1995 and change the law governing upcoming Palestinian legislative elections to make it clear that candidates, even those backed by Hamas or other militant groups, could not incite violence or keep ties with militias. However, the PA seems unlikely to adopt this approach, in part because the administration reportedly backed away from its position. What alternative strategies exist for limiting Hamas's political influence?

Background

The Palestinian Legislative Council was created by the Israeli-Palestinian Interim Agreement of 1995, which left no space for the participation of armed groups in the electoral process. The interim agreement included specific language barring candidates, parties, or coalitions from running if they commit or advocate racism or pursue the implementation of their aims by unlawful or nondemocratic means. The spirit of the accord required that individuals or groups who refused to acknowledge a two-state solution and who pursued their aims through violence and terrorism would be barred from running in the election.

However, when Yasser Arafat issued the electoral law just two months later, the restrictions on candidates and parties were softened. Candidates faced only the requirement that they present a written statement, signed by their representatives, affirming that they do not advocate racism. Because Hamas boycotted the 1996 elections, the discrepancy between the interim agreement and the election law never received much notice. But with Hamas's imminent participation in legislative elections scheduled for January 2006, the question of how to impose candidate or party restrictions is once again the focus of much attention.

At the September Quartet meeting in New York, U.S. secretary of state Condoleezza Rice noted, "There is concern that any democratic process must observe that you cannot have kind of an armed option within the democratic process. But we understand that the Palestinian political system is in transition, that it is in transition toward a democratic system, and that that has to be a Palestinian process." Ten days later in a speech at the Woodrow Wilson School of Public and International Affairs, Rice named Hamas as the source of concern, describing the group as an organization committed to Israel's destruction through terrorism. "We do, I think, need to give the Palestinians some space to try and reconcile their national politics, but they're going to eventually have to disarm these groups," Rice said. "They can't have it both ways."

Current Palestinian Law

The most forward-leaning Palestinian language about political parties came in a draft law in 1998. Article 8 of the proposed law banned any party that seeks to topple the constitutional government; threatens the independence and unity of the country; calls for war and internal violence; and jeopardizes democratic political life and regional and social unity. Article 16 of the proposed law gave the ministry of justice the right to prevent any party from registration if its basic system and its documents conflict with Palestinian law. Moreover, the draft law required legal parties to be members of the coalition that comprises the Palestine

Liberation Organization (PLO). Hamas and Palestinian Islamic Jihad would thus have needed to join the PLO and register with the interior ministry before becoming legal entities in the PA. The proposed law was not enacted.

The election law for the January 2006 elections passed the Palestinian Legislative Council on June 18, 2005, after months of haggling. While the legislation includes detailed procedures for candidate registration and stipulates the means by which candidates and party lists can qualify to run, there are no substantive rules candidates or parties must abide by. The restrictions from both the interim agreement and the 1995 election law have been dropped. Further, the Cairo Agreement, negotiated among Palestinian factions in March 2005, included Hamas and solidified its participation in elections. The agreement greatly influenced the drafting of the electoral law, and poses an obstacle to any efforts to amend it.

Because of Hamas's intention to run in the coming legislative elections, in July some legislative council members and nongovernmental organizations began to push for the adoption of a political parties law that would transform current Palestinian political parties and factions into democratic parties registered with the Ministry of Justice. Fatah and some smaller leftist parties agreed to these goals, but Hamas and the larger leftist parties, such as the Popular Front, refused to acknowledge the need for such a law. Ultimately, every faction but Hamas agreed on October 18 to a code of conduct in a nonbinding, extralegal negotiation sponsored by the Jerusalem-based Arab Thought Forum, but the code relates only to how the parties will behave during the campaign, not to the substance of their platforms. Hamas refused to sign on to the code because it prohibited campaigning in mosques.

Limited Options Available before Elections

With just over three months remaining before legislative elections, and only one month until the deadline for candidate registration, time is short for changing the legal standard under which parties and candidates can run. The legislative council is notoriously slow in passing controversial legislation, and currently it is focused more on the issue of law and order and confronting the government of Palestinian prime minister Ahmed Qurei, who is accused of doing little to combat lawlessness. A legislative committee is investigating the possibility of passing a political party law while time remains before the election, but its efforts are geared toward transforming and democratizing the current parties and factions after the upcoming elections, rather than delegitimizing any faction prior to the elections. There are thus numerous hurdles to the timely passage of legislation that would bar the electoral participation of parties or candidates based on the substance of their platforms.

Abbas's strategy is to bind these groups by the rules of the Palestinian system once they are elected, not to bar or limit their candidacies before elections. After his meeting with President Bush last week, Abbas told Agence France-Press, "The Americans wanted to talk about the participation or nonparticipation of Hamas in the elections. We explained our point of view to them and I think they will accept it." Given the high probability that Hamas candidates will run, Abbas could curb Hamas's potential influence by conducting a serious campaign to sell what he and his allies in Fatah will offer the Palestinian people. His rhetoric would be all the more meaningful were he to demonstrate tangible improvements in Palestinian daily life.

Abbas should also publicly announce that the results of the election will be binding—that is, the majority will determine government policies, and extralegal efforts by the minority will not be tolerated. Elections will thus mark the enforcement of the rule of law, ending the chaos of independent actions by armed factions that Abbas has tolerated to date. Abbas's announced plan for demanding that Hamas abide by his principle of One Authority, One Gun after the election would be taken more seriously in Washington and gain him more popularity at home if he demonstrated now that his security forces can keep weapons off the streets and prevent independent armed activities by Hamas, Palestinian Islamic Jihad, and Fatah's own al-Aqsa Martyrs Brigades. Since the legislative council is unlikely to change the law before January elections, Abbas owes his voters (and his international supporters) a declaration that he will do the following: (1) introduce legislation after elections to codify his One Authority, One Gun principle; (2) strengthen the judiciary and other means of

enforcing the law forbidding armed activities by groups other than the PA; and (3) allow parties to join his government only if they forgo independent armed capabilities and commit to the principles of the Quartet's Roadmap to Israeli-Palestinian peace and a negotiated settlement with Israel.

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