

Israel's New Law Holds Implications for Security and U.S. Relations

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Brief Analysis

A closer look at the domestic dynamics behind the legislature's vote sheds light on whether and when it might affect Israel's military readiness and relationship with Washington.

On July 24, the Israeli Knesset approved a highly controversial law that will empower the government to make policy decisions and appointments outside of judicial scrutiny. Passed by a 64-0 margin with the opposition walking out of the final vote, the law removes the Supreme Court's ability to use the "reasonableness" standard—a common-law principle that provided judicial oversight by comparing government actions to what a "reasonable" authority might do. Many consider this the first step in a far-ranging plan—as articulated by Justice Minister Yariv Levin—to further constrain the judiciary and effectively concentrate power in the executive branch.

Furor over the overhaul has dominated the Israeli political scene for months, spawning the largest grassroots opposition movement in the country's history. The massive weekly demonstrations involving hundreds of thousands of protesters have been defined by the idea that Israel's democratic, Jewish character should not be altered without broad public consensus. The movement is also driven by the realization that Israel does not have a constitution, but rather a set of Basic Laws, which do not require a supermajority to be amended as the U.S. Constitution does. Hence, many citizens are using the street to express what a plethora of polls have repeatedly shown—that the government does not have majority public support for unilateral legislative actions of this sort.

The Domestic Political Angle

Since the current government's inception last December, various hard-right partners in Prime Minister Binyamin Netanyahu's coalition have pressed him for this judicial overhaul in order to advance their goals (e.g., unrestricted [West Bank settlement growth \(https://www.washingtoninstitute.org/policy-analysis/israel-expands-settlements-smotrich-increases-his-authority\)](https://www.washingtoninstitute.org/policy-analysis/israel-expands-settlements-smotrich-increases-his-authority)) or preserve their privileges (e.g., ultraorthodox

exemption from military conscription). His aides privately say he had no choice but to put together such a coalition because centrist parties would not join him amid his ongoing corruption trial. Yet opponents say he assembled this government precisely to extricate himself from the trial, and some of his decisions seemed driven more by political self-interest than necessity.

For example, no one forced him to replace the previous justice minister with Levin, an official who has devoted his professional life to ensuring that the judiciary cannot be an effective check on executive power. Levin blunted most attempts at compromise on this issue over the past few months, fueling perceptions that he was more in charge than Netanyahu. Perhaps this was why the prime minister defied his doctor's call for rest after having pacemaker surgery this weekend, appearing at the seminal vote in an apparent bid to dispel rumors about his health. In any case, Levin personifies the opposition's concerns that this coalition is bent on forcing its policies through.

The pre-vote push for compromise had been led by figures such as President Isaac Herzog and Histadrut trade union chief Arnon Bar-David, who focused on diluting the bill and securing a commitment that further judicial changes would only happen after lengthy efforts to reach broad consensus. Their failure illustrates the total lack of trust between coalition and opposition leaders, whose rivalry has become even more bitter since Netanyahu reneged on his 2020 commitment to rotate the premiership with National Unity party head Benny Gantz. It also shows the difficulty they face in trying to sell compromise to their respective political bases, who have hardened their positions over months of protests and political strife.

Indeed, not a single member of Netanyahu's coalition broke ranks by opposing the vote or abstaining, showing that his government is both politically cohesive and aware of the steep personal penalty for dissenting in the present environment. For example, Defense Minister Yoav Gallant publicly stated that the legislation should be more broad-based, but he did not try to force action toward that end by threatening to resign. Sources say he feared that if he insisted on this stance, Netanyahu would simply fire him again as he did in March, when Gallant called for a pause in the judicial overhaul—only this time there would be no reprieve spurred by public pressure

(<https://www.washingtoninstitute.org/policy-analysis/after-gaza-operation-netanyahu-seeks-recover-ground>)

. Gallant also apparently feared that his replacement would be an ideologue such as Finance Minister Bezalel Smotrich, who has no serious military background and is solely focused on annexing the West Bank

(<https://www.washingtoninstitute.org/policy-analysis/israels-challenges-home-and-abroad-view-opposition>).

What's Next?

The opposition will now cast their hopes on several possible developments. For one, they have lodged multiple appeals against the new law at the Supreme Court, potentially triggering a standoff over Israel's Basic Laws. The court has never disqualified a Basic Law before, but it has also never faced such a deep challenge to its authority. If the court disqualifies the new legislation, it would put law enforcement agencies into a quandary over who to listen to—the court or the government? When Mossad director David Barnea was reportedly asked **(<https://www.haaretz.com/israel-news/2023-07-24/ty-article/.premium/israels-mossad-chief-ill-be-on-right-side-of-history-if-constitutional-crisis-unfolds/00000189-8833-d5eb-abcb-f9f778c50000>)** about such a standoff during an internal agency meeting held the morning of the vote, he stated that he would fall on the “right side of history” but did not elaborate on what exactly that meant.

Opposition members are also hoping that their success in the polls will keep growing amid civil strife against the government and ongoing economic deterioration **(<https://www.jpost.com/breaking-news/article-752401>)** (e.g., in foreign high-tech investment) due to the overhaul plan. In this sense, the fight over the judiciary's role will likely provide an organizing principle for the next election. Gantz pledged this week

(<https://twitter.com/gantzbe/status/1683531349519368192>) that the new law will be reversed in the future.

Meanwhile, speculation has spread that Netanyahu will at some point either fire the current independent-minded attorney-general, Gali Baharav-Miara, or split her duties so that he can appoint a solicitor-general more inclined to end the corruption case against him. Either move would spark massive public backlash—in fact, many Israelis already see the vote in apocalyptic terms, as a severing of the social contract whereby their country remains anchored in Western liberal moorings and their prime minister remains attentive to the broader public's views.

National Security Implications

Among the most immediate security issues to address are protests by military personnel who oppose the new law. In the days before the vote, over 1,100 Israeli Air Force (IAF) personnel—half of them pilots—announced that they would refuse to show up for voluntary reserve duty if the measure passed. They were joined by over 10,000 other members of the Israel Defense Forces reserves, including members of elite intelligence, cyber, and commando units. Some individuals have already acted on this threat, though their precise numbers are unclear. Will these boycotts spread further, perhaps even into active-duty personnel?

Such threats are especially impactful in the IAF. As officials have publicly indicated on multiple occasions, around 60-70 percent of Israeli airstrikes are conducted by reservists, and the IAF relies on these personnel more heavily than other branches do, especially pilots. If reserve crews do not perform the regular, intensive training required for these strikes, they may not be able to deploy for future missions. Hence, it is unclear how quickly the boycotts will affect Israel's military capacity if training is put on hold. The IDF has indicated (<https://www.ynetnews.com/article/rjekx1pcn>) that effects on its readiness will be felt within weeks, while Chief of Staff Herzi Halevy wrote an open letter to troops warning that Israel “will not be able to exist as a country” if military cohesion is broken. Officials also worry that enemies such as Iran and Hezbollah will seize on Israel's current divisions as an opportunity to increase their attacks. Accordingly, opposition leaders Gantz and Yair Lapid echoed Netanyahu in asking reservists (<https://www.reuters.com/world/middle-east/anti-netanyahu-protests-mount-after-israel-passes-judicial-bill-2023-07-25/>) to continue reporting for duty—at least until the Supreme Court has a chance to weigh in on the new law.

U.S. Bilateral Consequences

Shortly after the law passed, the White House issued a statement (<https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/24/statement-from-white-house-press-secretary-karine-jean-pierre-on-israel-judicial-reform/>) calling the vote's slim passage and highly polarized setting “unfortunate,” reiterating President Biden's belief that such changes should only be done amid “broader consensus.” The administration has had to thread this political needle for months, with the president reiterating his “ironclad” commitment to Israel's security and his decades of love for the country while simultaneously expressing discomfort over many of the current coalition's decisions. Biden believes that Israel's judiciary in its present form strengthens the country, while controversial legislation can only weaken it. The same difficulties underlie his decision not to invite Netanyahu back to the White House since the prime minister returned to power in December (Netanyahu announced last week that a U.S. visit of some sort was in the works, but the details were fuzzy, and any such plans may be affected by the Knesset vote).

To be sure, Biden has correctly and clearly indicated that bilateral security cooperation is “unshakeable” and therefore immune from policy differences between the two governments. Yet other issues may be affected by their current disagreement.

For instance, some believe the dispute could spur a tougher U.S. approach on settlement expansion in the West Bank. Yet the administration will almost certainly wait to see if the new law results in problematic activities on that front before taking action.

Elsewhere, Biden has apparently been pressing for a [three-way breakthrough](https://www.washingtoninstitute.org/policy-analysis/why-weak-abbas-dangerous-israel) (<https://www.washingtoninstitute.org/policy-analysis/why-weak-abbas-dangerous-israel>) between the United States, Saudi Arabia, and Israel. Yet will he do so with the same energy if he believes Netanyahu—who desperately wants that deal—spurned his pleas for compromise on the judicial issue? Some argue that Biden will press forward anyway because the deal remains in America’s interest (given the need to maintain gaps between Riyadh and China) and his own political interest (given the potential boost it could lend his reelection campaign). Yet others point out that Biden has unique leverage on this matter because neither Riyadh nor Netanyahu is popular with significant portions of the U.S. Democratic Party base.

In the longer term, Washington is no doubt wondering whether the Knesset’s decision is an aberration tied to the current political environment or a turning point in Israeli democracy. The vibrancy of the decades-long bilateral relationship is substantially based on the fact that Americans and Israelis [share core values](https://www.washingtoninstitute.org/policy-analysis/back-basics-shared-values-us-israel-relationship) (<https://www.washingtoninstitute.org/policy-analysis/back-basics-shared-values-us-israel-relationship>), not just military and economic interests. Any perceived erosion in these values could gradually affect the broad political base that supports the close relationship. Hence, supporters of U.S.-Israeli relations need to maintain focus on shared values as much as shared interests.

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