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# Pompeo Declares Settlements Legitimate: Background and Motivations

Unit for Political Studies

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### Unit for Political Studies

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On 18 November US Secretary of State Mike Pompeo announced that his country no longer recognises the legal position that views Israel's construction of "civilian settlements" in the West Bank as a violation of international law.<sup>(1)</sup> This development completes the Trump administration's decisive break with decades-old US policy on the Arab-Israeli Conflict, which began with defunding of UNRWA and escalated with recognition of Jerusalem as the Israeli capital and the relocation of the embassy and the recognition of the 1981 annexation of the Golan Heights. The move reverses US policy of more than forty years: successive administrations have officially held that settlements were "illegitimate", "illegal" and an "obstacle to peace".<sup>(2)</sup> The new position is an absolute violation of international law and legitimises colonialism. And despite its rejection by many international players, it may pave the way for Israel to permanently annex large portions of the West Bank.

## Content

Pompeo justified the new policy by saying that the official US position against settlement activity in the West Bank "did not advance peace",<sup>(3)</sup> singling out for particular criticism the 1978 Carter-era State Department's conclusion "that Israel's establishment of civilian settlements was inconsistent with international law." He also dismissed the Obama administration's policy, which reemphasised the illegitimacy of Israeli settlement-building when it declined to veto Resolution 2334 condemning the building of settlements in the West Bank and East Jerusalem, describing them as a "flagrant" breach of international law.<sup>(4)</sup> Pompeo claimed that "after carefully studying all sides of the legal debate," the Trump Administration had arrived at the same conclusion as Reagan's State Department: that "The establishment of Israeli civilian settlements in the West Bank is not per se inconsistent with international law." He emphasised four main points:<sup>(5)</sup>

- The Trump administration "recognize[s] that – as Israeli courts have – the legal conclusions relating to individual settlements must depend on an assessment of specific facts and circumstances on the ground. Therefore, the United States Government is expressing no view on the legal status of any individual settlement. The Israeli legal system affords an opportunity to challenge settlement activity and assess humanitarian considerations connected to it." What this means in practice is that international law on the occupation of foreign territory is being subordinated to local law in the occupying state.
- The administration is "not addressing or prejudging the ultimate status of the West Bank. This is for the Israelis and the Palestinians to negotiate. International law does not compel a

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1 "Secretary Michael R. Pompeo Remarks to the Press," U.S. Department of State, November 18, 2019, at: <https://www.state.gov/secretary-michael-r-pompeo-remarks-to-the-press/>

2 Jennifer Hansler, Nicole Gaouette and Jeremy Diamond, "Pompeo announces reversal of longstanding US policy on Israeli settlements," CNN, November 18, 2019, at: <https://www.cnn.com/2019/11/18/politics/pompeo-west-bank-settlements-announcement/index.html>

3 "Secretary Michael R. Pompeo Remarks to the Press." Ibid.

4 "Israel's Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms," UN, December 23, 2016, at: <https://www.un.org/press/en/2016/sc12657.doc.htm>

5 "Secretary Michael R. Pompeo Remarks to the Press." Ibid.

particular outcome, nor create any legal obstacle to a negotiated resolution.” The reality, of course, is that there is little left to negotiate now that the US administration has undermined the “sustainable solution”.

- The conclusion “that we will no longer recognize Israeli settlements as per se inconsistent with international law is based on the unique facts, history, and circumstances presented by the establishment of civilian settlements in the West Bank.”
- “[C]alling the establishment of civilian settlements inconsistent with international law hasn’t worked. It hasn’t advanced the cause of peace.”

## Tenuous American Justifications

According to experts in international law, Pompeo’s justifications do not stand up under legal scrutiny. His claim that the 1978 State Department assessment concluding that the settlements contravene international law is lacking in precision is baseless – it was entirely in keeping with the international legal position, since Article 49 of the Fourth Geneva Convention forbids any “occupying power” from undertaking “individual or mass forcible transfers” of the local population “regardless of their motive”. The same Article also stipulates that “the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”<sup>(6)</sup> Pompeo’s claim that the new line is the same as that adopted by the Reagan administration in 1978 is equally imprecise. Although it is true that Reagan did personally profess this opinion, his administration did not: the official US position continued to be that of 1978.<sup>(7)</sup>

Pompeo’s assertion that there is a “legal system” in Israel capable of challenging settlement activity is also totally incoherent. The Israeli judiciary is the judiciary of the occupying power itself. Although it has ruled some “informal settlements” to be illegitimate and ordered their inhabitants evicted, it has also given judicial legitimacy to all the original settlements in the West Bank and East Jerusalem. The same applies to the statement that the administration’s decision is not intended to impose a particular solution in the West Bank and that this is up to bilateral negotiations. This position has been directly contradicted by US Ambassador David Friedman, who stated last June that Israel has the right to annex certain regions of the West Bank.<sup>(8)</sup> Last September Netanyahu promised to annex the Jordan Valley and Jewish settlements in the West Bank,<sup>(9)</sup> and this promise seems to be well on its way to implementation given the new US position. And the claim that continuing disputes around Israeli settlements do not advance the cause of peace is equally nonsensical – if territory, Jerusalem, refugees and borders are the central issues in the conflict, what is left to disagree or negotiate over?

6 ICRC, *Convention (IV) relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949, (accessed on 21/11/2019 at: <https://bit.ly/2Kl6mm1>).

7 Zack Beauchamp, “Mike Pompeo’s big announcement about Israeli settlements, briefly explained,” VOX, November 18, 2019, at: <https://www.vox.com/world/2019/11/18/20971153/trump-israel-settlements-west-bank-pompeo-illegal>

8 David M. Halbfinger, “U.S. Ambassador Says Israel Has Right to Annex Parts of West Bank,” *The New York Times*, June 8, 2019, at: <https://www.nytimes.com/2019/06/08/world/middleeast/israel-west-bank-david-friedman.html?module=inline>

9 Oliver Holmes, “Netanyahu vows to annex large parts of occupied West Bank,” *The Guardian*, September 10, 2019, at: <https://www.theguardian.com/world/2019/sep/10/netanyahu-vows-annex-large-parts-occupied-west-bank-trump>



## Motivations and calculations

The causes and motivations behind the new US position can be divided into two groups. The first concerns Trump's political calculations, and the other his administration's overall approach.

### 1) Keeping Evangelicals happy

Trump is hoping to strengthen his prospects of reelection in 2020 by appealing to a broad base of Evangelical Christians who support the Israeli right for religious reasons – similar motivations were at work in the recognition of Jerusalem as the Israeli capital.<sup>(10)</sup> Evangelicals make up some 25% of US citizens and about 80% of white Evangelicals voted for Trump in the 2016 Presidential elections.<sup>(11)</sup> Some prominent Trump administration figures are identified with this base, including VP Mike Pence and Secretary of State Pompeo. And the gambit seems to have paid off: the settlement decision has been widely extolled by US Evangelicals.<sup>(12)</sup>

### 2) Attracting the Zionist Lobby and American Jews

Trump hopes that this move will win him the support of the Zionist Lobby at a time when support for Israel is receding among Democrats (particularly among its more liberal youth base).

### 3) Attempt to support Netanyahu

Despite administration officials' denials, there is plenty of evidence that the announcement was deliberately timed to support Netanyahu's struggle to stay in power after two inconclusive elections and an ongoing corruption trial.<sup>(13)</sup> Netanyahu needs to form a new government in order to secure a Knesset law granting him legal immunity. With Benny Gantz's failure (Blue and White Party) to form a coalition, Israel may be headed for a third round of elections. Trump's decision may thus be an attempt to bolster his electoral position.

### 4) Setting the tone of the "Lasting Solution"

Although Pompeo claims that the US repositioning is not intended to impose a particular solution in the West Bank, all indications suggest otherwise. It is the latest in a series of policy shifts that seem

10 Lara Jakes and David M. Halbfinger, "In Shift, U.S. Says Israeli Settlements in West Bank Do Not Violate International Law," *The New York Times*, November 18, 2019, at: <https://www.nytimes.com/2019/11/18/world/middleeast/trump-israel-west-bank-settlements.html>

11 Steve McQuilkin, "White evangelicals just elected a thrice-married blasphemer: What that means for the religious right," *U.S.A Today*, November 10, 2016, at: <https://www.usatoday.com/story/news/politics/elections/2016/11/10/conservative-christians-boorish-trump/93572474/>

12 Jennifer Hansler, *Ibid.*

13 Maria Caspani and Matt Spetalnick, "Trump shift on Israeli settlements fulfills wish list of evangelical base", *Reuters*, 19/11/2019 (accessed on 21/11/2019 at: <https://bit.ly/338qDaL>).

to serve this exact aim, a series which includes recognizing Jerusalem as capital of Israel, defunding UNRWA, and the Golan decision. It is clear that the Trump administration is seeking to redefine the terrain on which any solution will play out, imposing new restrictions favoring Israel over the Palestinians and the Arabs. It is neutralizing the “obstacles” in the way of a “solution” to the Arab and Palestinian conflict with Israel. In reality, this means legitimizing the status quo and removing obstacles to its consolidation. Trump himself has described his decision on Jerusalem as “a good thing to have done because we took it off the table,”<sup>(14)</sup> removing an impediment to negotiations. Today Pompeo is repeating the same line: “calling the establishment of civilian settlements inconsistent with international law hasn’t worked. It hasn’t advanced the cause of peace.”<sup>(15)</sup>

## Conclusion

Trump’s latest move can be seen as part of the implementation of the so-called “Deal of the Century” – an attempt to decisively settle the key issues facing a “lasting solution” (Jerusalem, refugees, sovereignty, territory and borders) by *fait accompli* without any need for negotiations with the Palestinian side. As of April, the Trump administration is no longer referring to the West Bank as “occupied”.<sup>(16)</sup> It is explicit about its abandonment of the two-state solution,<sup>(17)</sup> emphasizing an economic approach as it did at the Manama workshop in June. This can only entrench the reality of racial segregation within a single sovereign entity (Apartheid).

At least as far as settlements are concerned there is nothing really surprising about the US decision. Two of those responsible for Israeli-Palestinian negotiations and the peace plan on the US side are zealous partisans of Israel and its settlement efforts: Jared Kushner, and the US Ambassador to Israel, David Friedman.<sup>(18)</sup> The question remains how the Palestinian authorities in Ramallah and Gaza will respond, beyond simple statements of condemnation. The same applies to the broader Arab response. The Palestinian authorities are busy with the same sort of issues concerning any governing body, and most of whatever time and energy remains are being spent on internal dispute between the Fateh and Hamas governments.

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14 “Trump: Israel will pay ‘higher price’ for his Jerusalem recognition,” Ynet, August 22, 2018, at: <https://www.ynetnews.com/articles/0,7340,L-5333177,00.html>

15 “Secretary Michael R. Pompeo Remarks to the Press.” Ibid.

16 Ron Kampeas, “State Department No Longer Calling West Bank, Golan ‘Occupied’ By Israel,” The Forward, March 14, 2019, at: <https://forward.com/fast-forward/420868/state-department-no-longer-calling-west-bank-golan-occupied-by-israel/>

17 Ron Kampeas, “State Department No Longer Calling West Bank, Golan ‘Occupied’ By Israel,” The Forward, March 14, 2019, at: <https://forward.com/fast-forward/420868/state-department-no-longer-calling-west-bank-golan-occupied-by-israel/>

18 Jennifer Hansler. Ibid.