



المركز العربي للأبحاث ودراسة السياسات  
Arab Center for Research & Policy Studies

## ASSESSMENT REPORT

# Obama White House Late to the Chase: Israeli West Bank Settlements Illegal

Policy Analysis Unit - ACRPS | Jan 2017

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## Introduction

In the twilight hours of the Obama presidency, the White House dramatically expressed its long-simmering disappointment with the Israeli government under Benjamin Netanyahu and its unwavering settlement expansion across the Occupied Palestinian Territories (OPT). In a rare move, on December 23, 2016, the United States abstained from, rather than vetoed, the vote on UN Security Council (UNSC) Resolution 2334 which condemned as illegal the construction of Israeli settlements in the occupied West Bank and East Jerusalem. The White House's failure to use its influence to prevent the passage of the resolution raised the ire of Israelis and its stalwart allies in Washington, DC—including, seemingly, President-elect Donald Trump.

The move by the outgoing administration was followed on December 28 with a speech by Secretary of State John Kerry, who outlined five principles which the senior diplomat said were crucial to establishing lasting Israeli-Palestinian peace<sup>1</sup>. Notably, Israeli settlements in the OPT were highlighted as the most significant obstacle to peace in Kerry's remarks. The strident tone of the speech and its timing drove many in the Israeli government to fear that the Obama administration, despite assurances to the contrary, would attempt to enshrine the principles mentioned by Kerry in a further, binding UNSC resolution. Many observers viewed the abstention at the UNSC as an attempt by the Obama White House to restrict the maneuverability of a Trump presidency, who has already made clear his unconditional support for the Israeli state, inclusive of its construction of settlements in the OPT.

This analysis shall attempt to understand the motives behind the Obama administration's eleventh-hour activism, and its impact on the Palestinian-Israeli conflict. It shall also seek to understand the utility of the latest UNSC resolution, particularly given that Trump and Netanyahu have voiced their unwillingness to abide by either UNSC 2334 or by the broader principles set out in Kerry's speech.

## UN Security Council Resolution 2334

The text of UNSC Resolution 2334 makes clear that "the cessation of all Israeli settlement activities is essential for salvaging the two-State solution". The text explicitly

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<sup>1</sup> The full text can be found at the US Department of State website, "Remarks by John Kerry on Middle East Peace": <https://www.state.gov/secretary/remarks/2016/12/266119.htm>

demands that Israel “immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem”. The UNSC also made clear that it deems any de-facto changes to the reality on the ground in the OPT to be illegitimate, unless agreed to by both parties through negotiations as part of the Israeli-Palestinian peace process. Equally, however, the text of the agreement also calls for an end to “acts of violence against civilians”, explicitly affirming the need for “security coordination” between the security services of the Palestinian National Authority (PNA) and the Israeli police and military<sup>2</sup>.

## The Bases of a Solution

The speech made by Secretary of State Kerry within a week of the resolution being adopted by the UNSC set out five clear principles which, Kerry claimed, could provide a basis for a solution to the Israeli-Palestinian conflict agreeable to both sides:

- 1) The first priority elaborated by Kerry was the provision of a recognized international border dividing Israel from a “viable and contiguous Palestine”. While the speech made explicitly clear that the final borders would be based on the June 1967 lines, he also explicitly recognized the need for “mutual land swaps” previously agreed to in principle by both sides.
- 2) The realization of the initial aims of the 1947 UN General Assembly Resolution 181, which envisaged the creation of two states, envisioning separate Arab Palestinian and Jewish (Zionist) Palestinian states.
- 3) Arriving at a “realistic” and just compromise to the problem of Palestinian Refugees, with the aid of international support. Kerry’s address explicitly calls for the provision of compensation for these refugees as well as the determination of suitable “permanent homes” for those displaced and their descendants. In addition to a formal acknowledgement of their suffering, however, Kerry’s remarks also stipulated that the solution to the Palestinian refugee problem must not “affect the fundamental character of Israel”—in other words, any repatriations must not challenge the demographic status of Israel as a Jewish majority ethnocracy.
- 4) The recognition of Jerusalem as the capital city of two separate states, with a provision for access to places of worship in line with “the established status quo”.

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<sup>2</sup> The full text of UNSC Resolution 2334 is available online at the United Nations website: <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

- 5) The protection of Israeli security—in other words, the total end of the occupation must also lead to a situation where Israel is capable of defending itself, and where the putative Palestinian state is capable of providing security to its citizens within a demilitarized state.

Kerry's rhetoric falls well within the left-Zionist camp, which espouses the creation of a Palestinian state and which views the creeping de-facto annexation of Palestinian territories as posing a risk to the Jewish character of the State of Israel. This is a camp which wants to avoid having to choose between Israel's status as a 'Jewish state' and its status as a democracy. Finally, Kerry also made clear that the Obama White House's stance on Israeli settlements, as evidenced by its abstention on UNSC 2334, was fully in line with previous administrations' positions.

## Motives for the Obama Administration's Delayed Action

The Obama administration's belated decision to take a practical stance against Israeli settlement activity is rooted in a number of factors:

- The deep sense of disappointment which the White House feels towards Netanyahu for his foiling of all previous attempts to arrive at a resolution to the Israeli-Palestinian struggle. This failure has discredited a claim made by Obama during his first term, when he undertook to succeed where numerous others had failed before him—in the conclusion of an Israeli-Palestinian peace agreement and the creation of a viable, geographically contiguous Palestinian state side-by-side with a secure "Jewish state of Israel"<sup>3</sup>. For his part, Kerry was personally involved in US mediation efforts to achieve Israeli-Palestinian peace since his appointment in 2013. Israeli intransigence, however, destroyed any hopes of Kerry's work amounting even to a framework agreement between the two sides.
- The Obama administration adopts the view that the construction of Israeli settlements in the OPT has been the main obstacle to a lasting Israeli-Palestinian peace agreement. The White House has watched as the number of Israelis living

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<sup>3</sup> "Remarks by the President to the United Nations General Assembly", published September 23, 2010 and available online on the White House website: <https://www.whitehouse.gov/the-press-office/2010/09/23/remarks-president-united-nations-general-assembly>

in those illegal settlements has increased by 100,000 since Obama took office in early 2009.

- The Obama administration worries that the window of opportunity for a two-state solution may soon close: with the Israeli government inching towards a state of permanent occupation, a one-state solution of sorts is emerging on the ground, with Israel governing not only the Palestinians of Israeli citizenship but the close to five million Palestinians who live in the OPT<sup>4</sup>. Kerry's December 28 speech made a direct allusion to the possibility that if Israeli settlement expansion went unchecked, a future Israeli government would face the prospect of a wide-scale civil rights movement demanding equal voting rights for Palestinian in the West Bank.
- Washington's refusal to veto UNSC 2334 can also be viewed as the culmination of its strained relationship with the Netanyahu cabinet. Difficulties between the two administrations have been aired in public, with Israeli officials publicly humiliating Obama and Kerry, and Netanyahu openly endorsing Obama's Republican challenger, Mitt Romney, during the 2012 presidential campaign. By 2015, Netanyahu even responded to an invitation from Republican lawmakers to address the US Congress, to try to dissuade them from adopting the Iran nuclear agreement—a direct slap in the face of Obama, who had opposed the visit.
- Finally, the Obama administration's refusal to veto UNSC 2334 can be seen as a means of limiting the damage that could be done by the upcoming Trump presidency, given the widely-held view that the President-elect may end up undoing decades of standing US policy towards the Israeli-Palestinian conflict. This includes the possibility that Trump may end up moving the US Embassy to Israel from Tel Aviv to Jerusalem—as his candidate for US ambassador to Israel, settlement proponent David Friedman, would like—and reverse American support for the birth of an independent Palestinian state.

## Responses to the Lack of a US Veto

The Obama administration's failure to block a UNSC resolution delegitimizing Israeli settlements in the West Bank has sparked criticism from Israelis as well as some of

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<sup>4</sup> At the end of 2016, the Palestinian Central Bureau of Statistics claims nearly 3 million in the West Bank and 1.9 million in the Gaza Strip. Full statistics can be found here: <http://www.pcbs.gov.ps/site/512/default.aspx?tabID=512&lang=en&ItemID=1823&mid=3171&wversion=Staging>



Obama's own domestic detractors, including both Trump as well as Republican and Democrat members of Congress. British Prime Minister Theresa May, whose own country voted in favor of the text of the resolution, also voiced opposition to the unexpected non-veto by Washington. Countries on and off the Security Council which welcomed the text of the Resolution included Canada, France, Turkey and a number of Arab states.

The official Israeli response was shrill and broke with diplomatic norms; Netanyahu described the move as a "stab in the back" and other officials spoke of a "shameful betrayal". Netanyahu's office even suggested that the US had been behind the drafting of the text of UNSC 2334, a claim which the White House had to flatly reject. Kerry's speech offered more fuel for the fire, with the Israeli prime minister stating that the Secretary of State was "obsessed" with Israeli settlements but failed to recognize what he described as the roots of the conflict, namely "Palestinians rejecting the idea of a Jewish state within secure borders"<sup>5</sup>.

For his part, Donald Trump, whose imminent presidency has been welcomed by Netanyahu, has already managed to play a role detrimental to the international consensus on Israeli settlements. Not only did he publicly voice his opposition to the text of UNSC 2334, but he was also able to pressure the Egyptian government to withdraw the draft of an earlier, stronger text from the Security Council. Following Trump's response to Netanyahu's request that the US president-elect intercede with Cairo's Abdelfattah El-Sisi, the Egyptian delegation to the Security Council—where it sits as a rotating, elected member—withdrawed their earlier draft, ostensibly to provide more time for discussions around it. In the meantime, and following requests by the delegations of a number of Arab states and Palestine, a new text which would eventually become UNSC 2334 was drafted and submitted jointly by New Zealand, Venezuela, Senegal and Malaysia. Trump resorted to a series of cryptic tweets in which he called on Israel to "stay strong" until he was sworn in on January 20, after which "things would change". The Obama White House retorted that there was only one US president at any given time<sup>6</sup>.

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<sup>5</sup> Lesley Wroughton and Yeganeh Torbati, "In Parting Shot at Israel, Kerry warns Middle East peace in jeopardy", *Reuters*, December 29, 2016, available online: <http://in.reuters.com/article/israel-palestinians-kerry-idINKBN14H1FQ>

<sup>6</sup> Trump's tweets can be viewed directly here: <https://twitter.com/realdonaldtrump/status/812390964740427776>

## Conclusion

The Obama administration's admission that Israel is to blame for the failure so far of the Middle East peace process has come very late in the day. Barring a surprise move by the White House in the very final hours—the recognition of a Palestinian state, for example, or the acceptance of a wider role for the UNSC in deciding the parameters of an eventual solution to the Palestinian-Israeli conflict—it is also unlikely to impact Israeli policy significantly. Since Kerry's speech on December 28 fully discounted such an eventuality, and given that Resolution 2334 is technically “non-binding”, the Israelis can very likely continue business as usual. Nonetheless, the consequences for international law are important, especially as the UNSC has now fully endorsed the idea that the OPT include East Jerusalem, undermining Israeli claims that these are merely “disputed” or contested boundary disputes. Similarly, the text of the resolution will give added legitimacy to calls for its isolation and the imposition of sanctions on the country, not to mention its strengthening of the Palestinian leadership's negotiating position and its capability to bring international legal proceedings against Israel for its settlement policies. What observers looking back at this decision must not forget, however, is that this is the same Obama administration which raised US financial and military support to Israel to an unprecedented \$3.8 billion annually (budgeted for financial years 2018-2028).