

Weaponized International Law

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Commentary

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If international law is law in the ordinary sense of the term—and not moral posturing, political maneuvering, or personal payback—then it must comprise settled and public requirements, effective and even-handed implementation, and impartial resolution of disputes. The Obama administration’s scandalous decision not to veto U.N. Security Council Resolution 2334 last month suggests that international law at the United Nations is not law in the ordinary sense of the term.

Endorsed by the council’s other 14 members, Resolution 2334 condemns Israeli settlement policy as “a flagrant violation under international law” and recognizes all territory east of “the 4 June 1967 lines” (or the Green Line as it is sometimes called) as lawfully belonging to the Palestinians. The sanctimonious but shoddy justifications that leading U.S. officials have offered -- in what appears to have been a well-orchestrated public relations campaign -- reinforce the conclusion that the United Nations and its Obama-administration enablers were bent on punishing Israel and Prime Minister Benjamin Netanyahu. In the process they have accelerated the delegitimization of international law.

Addressing the Security Council to explain America’s abstention, Ambassador Samantha Power stated, “Our vote today is fully in line with the bipartisan history of how American presidents have approached both the issue—and the role of this body.” That’s false.

While previous administrations have criticized settlements as bad policy, it is the Obama administration that deviates from longstanding American practice by maintaining that every last inch of the West Bank—the territory beyond the Green Line held by Jordan on the eve of the June 1967 Six-Day War—is lawfully Palestinian land. In the very 1982 address on the Middle East that Power cites in defense of Resolution 2334, President Reagan declared, “In the pre-1967 borders, Israel was barely 10 miles wide at its narrowest point. The bulk of Israel’s population lived within artillery range of hostile Arab armies. I am not about to ask Israel to live that way again.”

Moreover, the peace agreement that President Clinton negotiated at the July 2000 Camp David summit—accepted by Israeli Prime Minister Ehud Barak and rejected by Palestinian Authority President Yasser Arafat—as well as the December 2000 Clinton parameters

envisaged Israel retaining control of population centers beyond the Green Line. So did President George W. Bush's 2004 letter of understanding to Prime Minister Ariel Sharon, which explicitly rejected a return to the 1967 lines.

Power is wrong on legal grounds as well as on security and historical ones. The Green Line is the 1949 armistice line to which Israel and Jordan agreed to end the war begun by five Arab armies invading Israel after it declared independence on the expiration of the British Mandate in May 1948. The armistice lines have no inherent legal significance. Indeed, U.N. Security Council Resolutions 242 and 338—the former passed following the 1967 war and the latter enacted after the 1973 Yom Kippur War—both recognized that the 1949 lines were not sacrosanct. Both provided for Israel to relinquish control of some portion, perhaps a large portion, of the land it seized from Jordan (and Syria and Egypt) in 1967 in exchange for security and peace.

In a Dec. 23 on-the-record press call, Deputy National Security Adviser for Strategic Communications Ben Rhodes echoed Power's spurious claim. Permitting Resolution 2334 to pass was, Rhodes asserted, "consistent with longstanding bipartisan U.S. policy as it relates to settlements" and to a "two-state solution." The same Rhodes who, in a controversial 2016 New York Times profile, said that reporters with whom he typically speaks about national security and foreign affairs "literally know nothing" assured reporters that to preserve the possibility of a two-state solution, the Obama administration was "compelled" to acquiesce in Resolution 2334.

But by further poisoning relations between Israel and the Palestinians, the U.S. inaction is likely to leave a two-state solution more elusive than ever. The resolution's easily foreseeable consequences are to embolden the Palestinians and their allies in the Boycott, Divestment, and Sanctions movement, encourage them to attack Israel in the International Court of Justice and the International Criminal Court, and to come back to the Security Council as soon as possible while continuing to spurn Netanyahu's repeatedly extended offer to negotiate.

In a Dec. 28 speech, Secretary of State John Kerry stressed that Resolution 2334 reflected America's "values." The speech's unusual length—approximately 9,500 words—indicated that it was long in the making. Like Power and Rhodes, Kerry insisted that the resolution was necessary to prevent a "viable two-state solution" from being "destroyed before our own eyes."

On the contrary, Resolution 2334 itself undermines prospects for successful negotiations. By proclaiming that Israel has no legal claim to land, including the Old City of the Jerusalem and the Western Wall, to which Jews have been attached for thousands of years, the resolution will cause even more Israelis to lose confidence in the U.N. as an honest broker. By singling out Israeli settlements as the principal impediment to peace while incorporating only vague references to systematic and widespread Palestinian incitement to hatred and

terrorist violence, the resolution will harden Palestinians in their conviction that they need only bide their time while the international community imposes greater costs on the Jewish state.

The Obama administration's blinkered diplomacy may well backfire. Last year the United States provided more than 20 percent of the U.N. budget. With both houses of Congress and the presidency in Republican hands, Sen. Lindsey Graham said he would propose a bill to withhold U.S. funds until the Security Council repeals Resolution 2334. Sen. Ted Cruz agrees.

In addition, shortly after he takes the oath of office, Donald Trump should invoke Article I, Section 8, Clause 10 of the United States Constitution, which gives Congress power to "define . . . offenses against the law of nations." President Trump should ask Congress to pass a law stating that the U.N. resolution is such an offense and shall not be recognized by any U.S. entity as authoritative. The law should impose sanctions against any U.S. person or entity that cooperates in the enforcement of the resolution.

Reasonable people will differ over the wisdom of Israeli settlement policy even as Israel must make every effort, consistent with security imperatives, to reduce its rule over West Bank Palestinians. Israel must also maintain its stated commitment to negotiations without preconditions with the Palestinians and its long-term goal must remain two states for two peoples.

But the Obama administration's efforts to use international law to criminalize the Netanyahu government's disagreement with it over how Israel might best achieve security and peace should be forcefully repudiated, certainly by those who believe that international law should not be degraded into a nasty brew of moral posturing, political maneuvering, and personal payback.

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