

Obama Belatedly Says No to Israel

Exclusive: If President Obama had confronted Israel over its illegal settlements earlier, he might have really achieved something, but his U.N. abstention as he heads out the door is better than nothing, observes Marjorie Cohn.

By Marjorie Cohn

For the first time in his eight-year presidency, Barack Obama said no to Israel. When the Security Council voted to condemn Israel for building illegal settlements in occupied Palestinian territories, the Obama administration abstained, allowing the resolution to pass.

Resolution 2334 says the settlements have “no legal validity,” calls them “a flagrant violation under international law,” and demands Israel “immediately and completely cease all settlement activities.”

Although 2334 is consistent with prior resolutions of the council, Israeli Prime Minister Benjamin Netanyahu threw a tantrum, calling the US abstention a “declaration of war.” In light of Obama’s unwavering enabling of Israel’s illegal policies, Netanyahu was likely shocked that Obama finally said no.

The United States, a permanent member of the council, vetoed a resolution in 2011 that would have condemned the building of Israeli settlements in occupied Palestinian territories. And in 2014, the U.S. opposed a draft resolution demanding Israel’s withdrawal from the West Bank within three years.

Since 1967, Israel has transferred more than a half million of its own citizens into Palestinian territories, continuing to build settlements in the West Bank and East Jerusalem.

In 2004, the International Court of Justice affirmed that the Palestinian territories are under Israeli occupation and Israel’s settlement building violates the Fourth Geneva Convention.

A state occupying territory not its own cannot build settlements on that territory and transfer its own citizens into them. Article 8.2(b)(viii) of the Rome Statute for the International Criminal Court (ICC) defines “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” as a war crime.

Israel took over the West Bank, Gaza and East Jerusalem by military force in 1967 and has held it under military occupation ever since.

Like Security Council Resolution 242, passed in 1967, Resolution 2334 reiterates

“the inadmissibility of the acquisition of territory by war.” Although Resolution 242 called for “withdrawal of Israel armed forces from territories occupied in the recent conflict,” Israel continues to occupy the Palestinian territories it acquired in the “Six-Day War.”

“Over 4.5 million Palestinians live in these occupied territories, but are not citizens of Israel,” Jimmy Carter wrote in the *New York Times*. “Most live largely under Israeli military rule, and do not vote in Israel’s national elections.”

Complete Control

Israel exercises complete control over every aspect of Palestinian life in the West Bank, East Jerusalem and Gaza. That includes borders, airspace, ingress and egress of people and goods, and the seashore and waters off the coast of Gaza. The occupation violates fundamental human rights of the Palestinians.

Flavia Pansieri, former U.N. deputy high commissioner for human rights, said last year that human rights violations “fuel and shape the conflict” in the occupied Palestinian territories, adding, “[h]uman rights violations in the West Bank, including East Jerusalem, are both cause and consequence of the military occupation and ongoing violence, in a bitter cyclical process with wider implications for peace and security in the region.”

Building illegal settlements in occupied Palestinian territories is not the only war crime Israeli leaders have committed. In 2014, Israel invaded Gaza and killed more than 2,000 Palestinians, the majority of them civilians. Nearly 10,000 Palestinians were wounded, more than 2,000 of them children. Tens of thousands of Palestinians lost their homes and infrastructure was severely damaged. Numerous schools, U.N. places of refuge, hospitals, ambulances and mosques were intentionally targeted.

Israel used the “Dahiya doctrine” to apply “disproportionate force” and cause “great damage and destruction to civilian property and infrastructure, and suffering to civilians populations,” as defined in the 2009 U.N. Human Rights Council (Goldstone) report. Those acts constitute evidence of war crimes under Article 8 (2)(a) of the Rome Statute.

The ICC can investigate and prosecute these crimes. Yet, in order to prevent such investigation and prosecution, the United States consistently opposed Palestine becoming a party to the Rome Statute. Palestine, which was recognized as a non-member observer State by the U.N. General Assembly, acceded to the Rome Statute in January 2015 and asked the ICC to investigate Israel for building illegal settlements and committing war crimes in Gaza.

In January 2015, Fatou Bensouda, the ICC prosecutor, opened a preliminary investigation into the illegal settlements and Israel's 2014 bombing of Gaza. Netanyahu is upset because the new Security Council resolution bolsters the case for ICC war crimes prosecution of Israeli leaders.

Violating U.S. Law

The United States' unwavering support for Israel violates U.S. law. Under the Leahy Law, military units that commit human rights abuses cannot receive U.S. training or weapons, and individuals who commit human rights abuses are denied U.S. visas. The State Department's annual report has documented Israeli violations. And the Foreign Assistance Act of 1961 prohibits assistance to any country "which engages in a consistent pattern of gross violations of internationally recognized human rights."

Yet, throughout his presidency, Obama has unconditionally supported Israel and shielded it from accountability for the war crimes of building settlements and targeting civilians in Gaza.

In September, Obama promised Israel a record \$38 billion in military assistance over the next 10 years, becoming the strongest financial supporter of Israel ever to occupy the White House. Obama, whom Israeli journalist Gideon Levy dubbed "the patron of the occupation," increased the amount of money the U.S. provides Israel each year from \$3.1 to \$3.8 billion.

Netanyahu called the increase in U.S. aid "unprecedented" and "historic," characterizing it as "the greatest accomplishment since sliced bread," according to Aaron David Miller, vice president of the Woodrow Wilson International Center for Scholars. "The bond between the United States and Israel is unbreakable," Obama declared, as he and Netanyahu shook hands.

The annual \$3.8 billion, more money than the U.S. gives to any other country, will fund the continuing Israeli military occupation of Palestinian lands, now in its fifth decade. Obama, however, is to be commended for finally standing up to Israel, albeit at the 11th hour. We cannot expect President-elect Donald Trump to follow suit.

Trump intervened unsuccessfully to prevent Resolution 2334 from coming to the council floor. He stated he will move the U.S. embassy in Israel from Tel Aviv to Jerusalem, even though, as Resolution 2334 states, East Jerusalem is occupied Palestinian territory. David Friedman, Trump's incoming ambassador to Israel, is notorious for funding the rightwing orthodox Beit El settlement near the West Bank city of Ramallah.

A Voice of Reason

We can hope Trump will listen to Gen. James Mattis, his nominee for Secretary of Defense. "I paid a military security price every day as a commander of CENTCOM because the Americans were seen as biased in support of Israel," Mattis said at the Aspen Security Forum in Colorado in 2013.

Mattis criticized Israel for building settlements in the occupied West Bank, saying they "are going to make it impossible to maintain the two-state option." He added that the settlements might weaken Israel as a Jewish and Democratic state and could lead to Israel becoming an "apartheid" state.

"If I'm in Jerusalem and I put 500 Jewish settlers out here to the east and there's 10,000 Arab settlers in here, if we draw the border to include them, either it ceases to be a Jewish state or you say the Arabs don't get to vote – apartheid," Mattis said.

Meanwhile, Resolution 2334 has propelled the illegality of Israel's settlements into the public discourse. While Israel has pledged to defy the council and continue building illegal settlements, Jewish Voice for Peace and other human rights organizations have called for "increasing grassroots pressure on Israel, through Boycott, Divestment and Sanctions [BDS] campaigns, until full human rights of Palestinians are realized."

Indeed, the text of Resolution 2334 implicitly invites countries to engage in BDS by saying they should "distinguish . . . between the territory of the State of Israel and the territories occupied since 1967."

Marjorie Cohn is professor emerita at Thomas Jefferson School of Law, former president of the National Lawyers Guild, deputy secretary general of the International Association of Democratic Lawyers, and a member of Jewish Voice for Peace. Her most recent book is 'Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues.' Visit her website at <http://marjoriecohn.com/> and follow her on Twitter @MarjorieCohn.
