



THE SECRETARY OF STATE
WASHINGTON

The Honorable
Andy Levin
House of Representatives
Washington, DC 20515

Dear Mr. Levin:

I am in receipt of your letter of November 21 in which you criticize the State Department's determination that the establishment of Israeli civilian settlements in the West Bank is not categorically inconsistent with international law – a decision which you contend reverses “decades of bipartisan US policy on Israeli settlements.” You further argue, in conclusory fashion, that this determination “blatantly disregards Article 49 of the Fourth Geneva Convention.”

While I appreciate your interest in this important issue, I could not disagree more with those two foolish positions. I will briefly respond to your principal points.

First, the State Department's determination did not reverse any policy with regard to Israeli settlements. Rather, the State Department reversed a legal determination by Secretary Kerry, made during the waning days of the Obama Administration, that the establishment of settlements was categorically inconsistent with international law. That determination was made in a failed attempt to justify the Obama Administration's betrayal of Israel in allowing UNSCR 2334 – whose foundation was the purported illegality of the settlements and which referred to them as “a flagrant violation” of international law – to pass the Security Council on December 23, 2016.

Second, Secretary Kerry's determination did not enjoy bipartisan consensus. Rather, it received bipartisan condemnation, including from leading Democrats in both chambers of Congress. Indeed, an overwhelming number of Senators and House Members, on both sides of the aisle, supported resolutions objecting to the passage of UNSCR 2334. Secretary Kerry's statement departed from decades of bipartisan consensus, reverting to an approach last advanced by the Administration of President Carter in 1978 whose position was reversed by the next succeeding president, Ronald Reagan.

While you are free to fixate on settlements as a barrier to peace, you are simply wrong in referring to that view as being subject to bipartisan agreement. No less a Democratic spokesman than the Senate Minority Leader publicly stated at his AIPAC address on March 5, 2018, that “it's sure not the settlements that are the blockage to peace.”

Third, you assert that we have “blatantly disregarded” the Fourth Geneva Convention. The Trump Administration has thoroughly reviewed and analyzed this issue and we respectfully disagree. Among the numerous sources and authorities supporting our view, I commend to you the writings of Eugene Rostow, who left his position as Dean of the Yale Law School to become

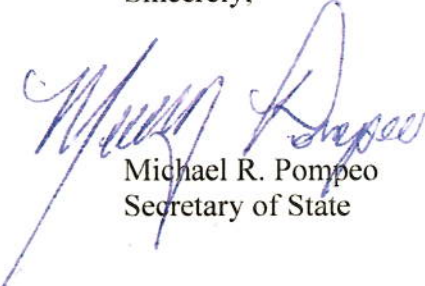
Under Secretary of State for Political Affairs in the Johnson Administration. Dean Rostow represented the United States in the peace talks that followed the 1967 Six Day War and was responsible for the drafting of UNSCR 242, which even today remains the primary architecture for the Israeli-Palestinian peace process. Dean Rostow stated in 1983 that "Israel has an unassailable legal right to establish settlements in the West Bank."

Fourth, US policy with regard to the Israeli-Palestinian conflict largely has been consistent for decades and remains so: we support and seek to facilitate direct negotiations between the parties towards the goal of a just and lasting peace agreement. Regrettably, as many experts concur, UNSCR 2334 and the related self-justifying remarks by Secretary Kerry have saddled the Trump Administration with a significant handicap in advancing the cause of peace by erroneously injecting into the conflict an incorrect and largely irrelevant legal component. This in turn has led to the hardening of positions, especially on the Palestinian side. By way of example, the closing of the Office of the General Delegation of the Palestine Liberation Organization in Washington D.C., which you criticize, was mandated by Federal statute following President Abbas' announcement before the United Nations General Assembly on September 20, 2017, that the Palestinian Authority "called on the International Criminal Court . . . to prosecute Israeli officials for their involvement in settlement activities . . ." I doubt that President Abbas, with apparent animus towards Israel, would have taken such an inappropriate and unlawful position absent the cover mistakenly granted under UNSCR 2334 and Secretary Kerry's unfortunate speech.

The Trump Administration is committed to working tirelessly to advance the cause of peace between Israelis and Palestinians. We approach the issue pragmatically and diplomatically, but we eschew the erroneous positions of international law that have gained favor in the past decades. The Obama-Kerry departure from America's historic support of Israel has done nothing to make peace more attainable. The State Department's recent determination that the establishment of Israeli civilian settlements in the West Bank is not per se illegal is an important step in the peace process and we are confident that it creates the right platform for further progress.

We hope this information is helpful to you. Please let us know if we may be of further assistance.

Sincerely,



Michael R. Pompeo
Secretary of State