

NISSAN SLOMIANSKI M.K.

Chairman of the constitution law justice committee
THE KNESSET, JERUSALEM



לשכת ח"כ ניסן סלומינסקי

יו"ר ועדת חוקה חוק ומשפט
הכנסת, ירושלים

טו' שבט תשע"ח

31/01/2018

For the Personal Attention of
US Ambassador in Israel
Mr. David Friedman

Dear Ambassador Friedman,

Re: Position Taken By the United States on Legality of Israeli Settlements

First, it is a pleasure to thank you, Mr. Ambassador, for performing a diplomatic miracle - uniting Israel's leaders, since all agree that you are a great and close friend of Israel.

I would also like to thank you, who serves as the official representative of the US Government here in Israel, for the moving and supportive speech by US Vice President Pence in the Knesset. Vice President Pence brought to Israel the greetings of the US President - about whom our Prime Minister has rightly commented that "there is no greater supporter of the Jewish people and the Jewish state than President Donald Trump".

I now ask to draw your attention to a recent revelation by legal commentator Dr. Yehuda Yifrach, attached, according to which there is in existence, an internal American legal opinion which maintains that Israel's settlements are illegal. This is the Hansell memorandum, written in the 70's, by the then-legal advisor of the US State Department, Herbert Hansell. The memorandum took a position that Israel's settlements are illegal and "in the occupied territories, establishment of the civilian settlements ... is inconsistent with international law".

When Mr. Hansell was asked, in the course of an interview with the press, whether he ever felt uncomfortable being the lawyer for a dubious issue, he replied that there "were situations... where I had to structure a legal defense for positions which had been taken in testimony by the Secretary (of State) in connection with Middle East questions. I was the author of a **controversial** legal opinion about the legality, under international law, of settlements..., where the Secretary... had taken policy positions on that issue".

Despite the unswerving support and sympathy of the present Administration for the State of Israel, it seems that in practice, the US State Department has never made an effort to revisit this memorandum, and the original memorandum document remains to this day the official legal position of American foreign policy.



Resolution 2334 which was approved in the United Nations Security Council on 23 December 2016, insisted that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, constitutes a flagrant violation under international law - to use Security Council terminology.

Your predecessor, former US Ambassador Samantha Power, made use of the memorandum to justify her voting decision regarding Resolution 2334.

The previous Secretary of State, John Kerry, also relied on the Hansell opinion to provide justification for Resolution 2334.

Mr. Hansell affirmed to the Washington Post in 2009 that the opinion he wrote "still stands as the only definitive opinion of the U.S. government from a legal standpoint".

Needless to say, from a legal standpoint, there is no lack of scholars of the highest order who took issue with the opinion penned by Hansell. Just by way of example, I will mention, inter alia, the late Professor Eugene Rostow, who among other senior positions served as dean of Yale Law School, as well as, in our day, Prof. Alan Dershowitz of Harvard Law School.

The legality of settlement rests inter alia on the rights of the Jewish people to the Land of Israel including Jerusalem, Judea and Samaria as recognized by the international community in the San Remo Resolution which gave international validity to the historical connection between the Jewish people and the Land of Israel, a right which cannot be revoked.

The Jewish Zionist national settlement enterprise is my own pride and joy and I have been most privileged to be among those who took a leading and active role in building this enterprise. I became the first CEO of Gush Emunim, I was among the founders of Elkana, serving for 21 years as its Council Head and I also served as the Chief Operational Officer of the Yesha Council.

Once again I would like to reiterate that the present Administration has already done much for the State of Israel and we are all most gratified and appreciative for the historical declaration by President Trump of his official recognition of Jerusalem as the capital of Israel and the expected transition of the American embassy to our eternal capital.

This having been said, as Chairman of the Israeli Knesset's Constitution, Law and Justice Committee I believe it is unjust for the official position of the American Administration, particularly under the leadership of President Trump, to continue to relate to hundreds of thousands of Israelis who live in settlements as though they were law-breakers. Therefore, I respectfully request that you take steps to modify the Hansell memorandum, out of recognition that this is a legal opinion which reflects only the legal approach which takes issue with the State of Israel regarding settlement –

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without reflecting the legal approaches which concur with the State of Israel's legal position regarding the legal right of settlement.

May I clarify that rescinding this specific legal memorandum would not imply taking any position either for or against Jewish settlement. Instead this would simply imply that denigrating Israel's policies and Israeli settlers on ostensible grounds of illegality, is not legitimate.

I would be most grateful to you, Sir, if you could take action to address the situation.

Sincerely

Nissan Slomiansky, MK
Chairman, Constitution, Law and Justice Committee