

# Understanding Resolution 2334: Did the Obama Administration Betray Israel at the UN?

by Joseph S Spoerl



## Abstract

Resolution 2334 in effect prejudices the outcome of negotiations on the crucial topics of borders, Jerusalem, and settlements. It does so in favor of the Palestinians, thereby circumventing and undermining the Oslo peace process that former U.S. Secretary of State John Kerry professed to protect and foster. The resolution rewards Palestinians for violating their commitment to negotiate directly with Israel and teaches them the (false) lesson that they can unilaterally impose their preferred outcome on Israel through international

pressure. Therefore, Resolution 2334 removes the incentive for the Palestinians to return to bilateral negotiations with Israel.

Furthermore, the Obama administration's support for Resolution 2334 suggests that the President tacitly gave his administration's support for the Palestinian strategy of trying to impose a solution on Israel from the outside, using international organizations and pressure to circumvent the bilateral negotiations stipulated in the Oslo Accords. To impose the solution the Palestinians want necessarily entails recasting Resolution 242 so that Israel cannot make use of it to retain any of the territories east of the 1949 armistice line.

\* \* \*

On December 23, 2016, the United Nations announced the passage of UN Security Council Resolution 2334, which condemns Israeli settlements east of the 1949 armistice line, that is, in the West Bank and East Jerusalem (including the Old City with its ancient Jewish Quarter).<sup>1</sup> Passage of this resolution became possible only because of the deliberate refusal of any of the five permanent members of the Security Council, including the U.S., to exercise their veto power. Secretary of State John Kerry insisted that in refusing to veto the resolution, the Obama administration was simply conforming to long-standing American policy in favor of ending the Israeli-Palestinian conflict by means of the so-called "two state solution," a policy that has also included his country's condemnation of Israeli settlement building in the West Bank.<sup>2</sup> In fact, however, UNSC Resolution 2334 constitutes a departure from past precedent, both for the Security Council and for the United States, and a step that creates several new problems for Israel. Moreover, the Trump administration probably will not be able to reverse this new state of affairs, since the other permanent members of the Security Council presumably

would use their veto power to protect Resolution 2334. Therefore, it is important to understand the impact of this resolution.

For the past half-century, a major point of reference in all discussion surrounding Israeli-Palestinian peace talks has been UN Security Council Resolution 242, passed on November 22, 1967 in the wake of the June 1967 Arab-Israeli war.<sup>3</sup> As Dore Gold has written, Resolution 242 “would become the foundation of the Arab-Israeli peace process for the next 35 years,” undergirding “the 1979 Egyptian-Israeli Treaty of Peace, the 1991 Madrid Peace Conference, the 1993 Oslo Accords, and the 1994 Treaty of Peace between Israel and Jordan.”<sup>4</sup>

Resolution 242 famously called for the “withdrawal of Israel armed forces from territories occupied in the recent conflict,” but only within the context of a peace agreement that would guarantee the sovereignty and territorial integrity of every state in the area, including Israel. While Resolution 242 emphasizes “the inadmissibility of the acquisition of territory by war,” the major diplomatic players at the time also stressed that Israel had no clearly defined borders that would exclude territories in the West Bank as unambiguously lying outside of its boundaries. On December 9, 1969, U.S. Secretary of State William Rogers made the point as follows:

*The boundaries from which the 1967 war began were established by the 1949 armistice agreements, and have defined the areas of national jurisdiction in the Middle East for twenty years. Those boundaries were armistice lines, not final political borders. The Security Council Resolution [242] neither endorses nor precludes the armistice lines as the definitive political boundaries.*<sup>5</sup>

U.S. Ambassador to the U.N. Arthur Goldberg made the same

point in the debate at the U.N. on November 15, 1967, pointing out that there had never been agreement on permanent borders between Israel and her neighbors after the 1948 war and that the 1949 armistice lines were provisional lines based on purely military considerations. "These lines, he said, stood to be revised as a part of the transition to peace."<sup>6</sup>

Moreover, Resolution 242 deliberately refrained from demanding Israeli withdrawal from "*the* territories" occupied in the Six-Day War, calling instead for withdrawal from "territories" occupied in that war, without defining the extent of the withdrawal.<sup>7</sup> Abba Eban, Israel's foreign minister at the time, notes that the British government sponsored Resolution 242. Therefore, its interpretation of the text deserves special weight. Leading British diplomats went on the record as stating that the withdrawal envisaged by the resolution was not to be from "all the territories," but only from some of them.<sup>8</sup> More recently, Northwestern University Law School Professor Eugene Kontorovich, one of the leading scholars on this topic, has demonstrated that Resolution 242 "contemplates only a partial Israeli withdrawal."<sup>9</sup> Over several months of deliberations in the Security Council, British and American diplomats repeatedly rebuffed efforts by Arab-aligned nations to require withdrawal from "all" or from "the territories."<sup>10</sup> At one point, the Soviet chief of state, Alexei Kosygin, sent a message directly to President Lyndon Johnson demanding that the word "the" be placed before "territories" in the text of Resolution 242. President Johnson, however, firmly rejected this demand.<sup>11</sup>

Briefly, one cannot reasonably interpret UN Resolution 242 as denying Israel a right to retain and settle *any* of the territories it occupied in 1967. Yet this is exactly what the Obama administration and Resolution 2334 have done. As Abba Eban points out, Resolution 242 does not even mention the

“armistice lines of 1949” or the “lines of June 4, 1967,” let alone regard them as sacrosanct and inviolable international boundaries.<sup>12</sup> In contrast, Resolution 2334

- Presupposes “‘a two-State solution’ based on the 1967 lines.”
- “*Reaffirms* that the establishment by Israel of settlements in *the Palestinian territory occupied since 1967, including East Jerusalem*, has no legal validity and constitutes a flagrant violation under international law...” [emphasis added]
- Demands “that Israel immediately and completely cease all settlement activities in the *occupied Palestinian territory, including East Jerusalem...*” [emphasis added]
- Presupposes, as the two preceding bullet points show, that *all* the territory occupied by Israel in 1967 is (or already was) “Palestinian territory.”
- Urges “an end to the Israeli occupation that began in 1967.”

It is highly significant that Resolution 2334 begins with an explicit re-affirmation of Resolution 242. In doing so, it imposes a (historically false) reinterpretation on the text of Resolution 242. According to this inaccurate reinterpretation, Resolution 242 calls for Israel to withdraw from *all* the territories occupied in 1967 and presupposes the sacrosanctity of the 1949 armistice lines as if they were the agreed-upon international frontier between Israel and her neighbors.

In the years following 1967, the General Assembly passed a steady stream of resolutions which demanded a total Israeli withdrawal from all of the territories beyond the 1949 armistice lines.<sup>13</sup> (General Assembly resolutions, however, are not legally binding but are considered as recommendations of the majority of states voting for them.) The Security Council, where the U.S. has a veto, is a different matter. American Presidents and Secretaries of State steadily insisted that

Israel should not be forced back within its pre-1967 frontiers. The above include Ronald Reagan in 1982, George Schulz in 1988, George H. W. Bush in 1991, Warren Christopher in 1997, and George W. Bush in 2004.<sup>14</sup> This was the case until Barack Obama and John Kerry, protected by their lame-duck status and unhindered by any future electoral ambitions, decided to up-end decades of American policy. Thus, in its last days, the Obama administration chose to side with the intensely anti-Israel UN General Assembly and broke with decades of consistent foreign policy.

The result is that the Palestinians have acquired new ammunition to use in future peace negotiations with Israel. For example, the Western Wall Plaza and the Jewish Quarter of the Old City of Jerusalem, located east of the 1949 armistice line, are of inestimable cultural and religious significance to Jews everywhere. The Security Council is now on record as stating that Israeli settlement east of the 1949 armistice line “has no legal validity and constitutes a flagrant violation under international law.” Palestinian negotiators can use this small patch of earth to extract concessions from Israel. Imagine a Palestinian negotiating team saying to their Israeli counterparts, “Oh, so you want us to give you the Western Wall. Well, how much is it worth to you?” Similarly, the Palestinians have insisted that any future land swaps in a peace deal must be equal in size and quality.<sup>15</sup> If Israel wishes to swap some part of its pre-1967 territory for the Western Wall, what exactly would be “equal in quality”? Admittedly, any Israel-Palestinian negotiations over Jerusalem would be difficult, even without Resolution 2334. The resolution, however, favors the Palestinians and could make them more demanding and recalcitrant. It is hard to understand how it promotes the cause of a negotiated peace.

Resolution 2334 shows that Obama and Kerry did not really understand the Oslo Accords or the peace process based upon them. The Oslo Accords do not include a demand for a full

Israeli withdrawal to the 1949 armistice lines.<sup>16</sup> In fact, in 1995, one of the principal proponents of the Oslo Accords, Prime Minister Yitzhak Rabin, explicitly stated in the Knesset that as part of the permanent settlement toward which the peace process was headed, "we will not return to the 4 June 1967 lines."<sup>17</sup> In the Oslo Accords, Israel and the PLO agreed to resolve all the outstanding issues: borders; settlements; refugees; Jerusalem; and security, through bilateral negotiations.<sup>18</sup> Resolution 2334 in effect prejudges the outcome of those negotiations on the crucial topics of borders, Jerusalem, and settlements, in favor of the Palestinians, thereby circumventing and undermining the Oslo peace process that Kerry allegedly was trying to protect and foster. The resolution rewards the Palestinians for violating their commitment to settle everything by negotiating directly with Israel. It teaches them the (false) lesson that they can unilaterally impose their preferred outcome on Israel by international pressure. Therefore, Resolution 2334 undermines the Palestinians' incentive to return to bilateral negotiations with Israel.

Furthermore, the Obama administration's support for Resolution 2334 suggests (without strictly proving) that Obama tacitly adopted the Palestinian policy of trying to impose a solution on Israel from the outside, using international organizations and pressure to circumvent the bilateral negotiations called for by the Oslo Accords. To impose the solution the Palestinians desire means necessarily re-casting Resolution 242 so that Israel cannot use it to retain any of the territories east of the 1949 armistice line. As we have shown, this is the meaning of Resolution 2334. We must ask whether it was an accident or a coincidence, or was it the explicit intention of Obama and Kerry. Did Obama in fact intend to scrap the Oslo peace process and enable the Palestinians to circumvent bilateral talks, thereby eliminating the necessity of compromise and recognition of the Jewish state?



A much graver concern is that Obama and Kerry have fundamentally misconstrued the nature of the Israeli-Palestinian conflict. What if the PLO leadership entered into the Oslo Accords in bad faith? What if their goal was merely to gain a foothold within historic Palestine, not in order to live peacefully and permanently beside the Jewish State of Israel, but to continue waging the struggle until Israel no longer exists as a Jewish state?<sup>19</sup> If so, then ejecting Israel altogether from the West Bank would give the Palestinians the valuable high ground of Judea and Samaria, an effective base from which to launch attacks into the Coastal Plain where most Israelis dwell. Hence, the Palestinian effort to push Israel back within its 1967 boundaries is not so innocent or benign after all. It is simply one aspect of the ongoing Palestinian political war to eliminate Israel and replace it with an Arab-Muslim majority state.

Even if one believes in the good faith of the PLO leadership, Hamas certainly remains committed to Israel's destruction,<sup>20</sup> and opinion polls show that Hamas has a realistic chance of winning Palestinian elections were such elections to be held today, just as they won in 2006.<sup>21</sup> What would a full Israeli withdrawal mean for the West Bank? Beverley Milton-Edwards and Stephen Farrell observe that Israel's withdrawal from Gaza in 2005 was the indispensable precondition for its takeover by Hamas in 2006-7.<sup>22</sup> In contrast, in the West Bank, "Israel's ever-present troops, tanks, helicopters, and snatch squads would never tolerate an overt Hamas armed presence."<sup>23</sup> Those who demand that Israel withdraw to the pre-1967 borders are hardly promoting peace as it would empower Hamas to wage an even bloodier war of conquest against Israel than the one they have been waging from the Gaza Strip since 2007.<sup>24</sup>

There are two possibilities: Either the Palestinian leadership sincerely supports two states for two peoples. If that is the



case, Obama and Kerry have made negotiations much more difficult. Or, the Palestinians want to remove Israel from the West Bank as part of their war to eliminate Israel altogether, in which case Obama and Kerry have given them fresh ammunition with which to delegitimize Israel as an “illegal occupier of Palestinian land.” In any case, the Obama administration’s support for Resolution 2334 is a betrayal of an ally of the United States. It will do nothing to advance the cause of peace in the Middle East.

\* \* \*

## Notes

1 United Nations Security Council, Resolution 2334 (2016), Adopted by the Security Council at its 7853<sup>rd</sup> meeting, on December 23, 2016, <http://www.un.org/webcast/pdfs/SRES2334-2016.pdf>.

2 U.S. Department of State, John Kerry, “Remarks on Middle East Peace,” December 28, 2016, <https://www.state.gov/secretary/remarks/2016/12/266119.htm> (see p. 8 of the 14-page transcript).

3 For the official text on the UN website, see [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/242\(1967\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/242(1967)). The text also may be found in multiple sources, e.g. Itamar Rabinovich and Jehuda Reinharz, *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations, Pre-1948 to the Present*, second ed. (Waltham, MA: Brandeis University Press, 2008), 242-3.

4 Dore Gold, *Tower of Babbble* (New York: Crown, 2004), 102. Benny Morris likewise asserts that Resolution 242 “was to become the cornerstone of all future peace efforts in the Middle East down to the late 1990s.” Benny Morris, *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-2001* (New York: Random House/Vintage, 2001), 346.

5 Cited in Abba Eban, *An Autobiography* (New York: Random House, 1977), 452.

6 Ibid., 450.

7 The French translation of the resolution does use the phrase “*des territoires*,” but it was the British who drafted the original, and the very authors of the document insisted that the language did not demand that Israel withdraw from all the territories occupied in 1967; moreover, in translating between French and English, the French definite article is often rendered as the indefinite article in English, and vice versa. Dore Gold, *Tower of Babble*, 105.

8 Abba Eban, *An Autobiography*, 452.

9 Eugene Kontorovich, “Resolution 242 Revisited: New Evidence on the Required Scope of Israeli Withdrawal,” 16 *Chicago Journal of International Law*, 127 (2015), 127-150, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2534179](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2534179).

10 Kontorovich, “Resolution 242 Revisited,” 129-130.

11 Gold, *Tower of Babble*, 104-5.

12 Abba Eban, *An Autobiography*, 451.

13 Gold, *Tower of Babble*, 108-9.

14 Ibid., 106-7.

15 Daoud Kuttub, “Palestinians receive little in Israeli-proposed land-swap deal,” *Al-Monitor*, February 25, 2014, <http://www.al-monitor.com/pulse/originals/2014/02/land-swap-israel-palestine-walla.html>.

16 Alan Baker, “‘The Two-State Solution’: What Does It Really Mean?”, *Jerusalem Viewpoints*, No. 609, February 2017, Jerusalem Center for Public Affairs, <http://jcpa.org/article/two-state-solution-really-mean/>.

[17](#) Cited in Alan Baker, "'The Two-State Solution': What Does It Really Mean?", 6 (of PDF).

[18](#) "Oslo Accords between Israel and the Palestinian Liberation Organization," September 13, 1993, Article 15: "Disputes...shall be resolved by negotiations...", in: Itamar Rabinovich and Jehuda Reinharz, *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations, Pre-1948 to the Present*, second ed. (Waltham, MA: Brandeis University Press, 2008), 490-3.

[19](#) A small sample of the abundant evidence behind this concern: Efraim Karsh, *Arafat's War: The Man and His Battle for Israeli Conquest* (New York: Grove Press, 2003), 5-6, 46, 59, 61, 83, 156; Barry Rubin and Judith Colp Rubin, *Yasir Arafat: A Political Biography* (Oxford: Oxford University Press, 2003), 69, 147, 238-9, 242-3, 261; Yossef Bodansky, *The High Cost of Peace* (Roseville, CA: Prima Publishing, 2002), 9-12, 181; Joel Fishman, "Ten Years Since Oslo: The PLO's 'Peoples War' Strategy and Israel's Inadequate Response," Jerusalem Center for Public Affairs, September 1, 2003, <http://jcpa.org/article/ten-years-since-oslo-the-plos-peoples-war-strategy-and-israels-inadequate-response/>