US Policy on the Illegality of Israeli Settlements under International Law

(excerpted from Ambassador Daniel Kurtzer, "Do Settlements Matter? An American Perspective," Middle East Policy, vol. 16, issue 3, fall 2009)

Every U.S. administration since 1967 has argued strongly against Israeli settlement activity. During the administration of President Jimmy Carter, the United States took the view that settlements are illegal under the Fourth Geneva Convention. Secretary of State Cyrus Vance made this clear in Congressional testimony before the House Committee on Foreign Affairs, on March 21, 1980:

> U.S. policy toward the establishment of Israeli settlements in the occupied territories is unequivocal and has long been a matter of public record. We consider it to be contrary to international law and an impediment to the successful conclusion of the Middle East peace process. . . . Article 49, paragraph 6,[1] of the Fourth Geneva Convention is, in my judgment, and has been in the judgment of each of the legal advisers of the State Department for many, many years, to be . . . that [settlements] are illegal and that [the Convention] applies to the territories.

Vance's view was based on longstanding U.S. policy. For example, in March 1976, Ambassador William Scranton told the UN Security Council:

> Substantial resettlement of the Israeli civilian population in occupied territories, including East Jerusalem, is illegal under the convention and cannot be considered to have prejudged the outcome of future negotiations between the parties on the locations of the borders of states in the Middle East. Indeed, the presence of these settlements is seen by my government as an obstacle to the success of the negotiations for a just and final peace between Israel and its neighbors.

Scranton's statement was based on the position expressed by Ambassador Charles Yost, who told the UN Security Council in July 1969:

> Among the provisions of international law which bind Israel, as they would bind any occupier, are the provisions that the occupier has no right to make changes in laws or in administration other than those which are temporarily necessitated by his security interests, and that an occupier may not confiscate or destroy private property. The pattern of behavior authorized under the Geneva Convention and international law is clear: the occupier must maintain the occupied area as intact and unaltered as possible, without interfering with the customary life of the area, and any changes must be necessitated by the immediate needs of the occupation.

Starting with the Reagan administration, American policy makers refrained from commenting on the legality of settlements, but rather noted the impact that continued settlement activity would have on the peace process.

---

[1] "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."