

Elizabeth Warren: Those Settlements “Violate International Law and Make Peace Harder to Achieve”

by Hugh Fitzgerald



Elizabeth Warren reacted to Secretary Pompeo’s statement that in the view of the Administration, Israel’s settlements did not violate international law with characteristic swift certainty:

“Another blatantly ideological attempt by the Trump administration to distract from its failures in the region. Not only do these settlements violate international law – they make peace harder to achieve. As president, I will reverse this policy and pursue a two-state solution,” Warren said.

Was Pompeo’s announcement merely a cynical attempt to

“distract” the public “from its failures in the region”? Surely such an announcement was certain to have exactly the opposite effect – it would focus the media’s attention on the Israelis and Palestinians as it had not been so focussed since the Great March of Return began on March 30, 2018. Every major media outlet – CNN, AP, BBC, Reuters, New York Times, Washington Post – covered Pompeo’s remarks in detail. Those remarks were hardly designed to “distract” from supposed “failures in the region.” And as for those “failures,” what does Warren have in mind? Was the defeat, by the Americans and the Kurds, of ISIS in Syria a “failure”? Was the collapse of ISIS in Iraq, to which American military assistance contributed, a “failure”? Was the body-blow to Iran’s economy, that the Administration brought about by reimposing sanctions, that in turn led to the streets of Iran now being filled with Iranians shouting against the regime, a “failure”? Was cutting off aid to the massively corrupt UNRWA a “failure”? Was cutting off aid to the Palestinian Authority, because of its Pay-for-Slay program, a “failure”?

Warren then blithely noted that the settlements “violate international law.” This was not always her understanding. At a Town Hall in August 2014, Warren called into question the notion that future US aid to Israel should be contingent on the halting of Israeli settlements in the West Bank. Clearly she did not then regard the settlements as being “illegal.”

And two years later, in September 2016, ahead of a U.N vote on a resolution condemning Israeli settlements, Warren was one of 88 senators who signed a letter to President Obama sponsored by the American-Israel Public Affairs Committee, urging him to “veto any one-sided UNSC resolution that may be offered in the coming months”: the resolution was approved by the Security Council 14-1-0, with the United States shamefully abstaining.

Again, Warren was still willing to urge the government to veto a Security Council resolution that treated the West Bank settlements as “illegal.”

What changed her mind? Perhaps, after Bernie Sanders's claim that he would take some aid money away from Israel and give it to the Palestinians in Gaza, Warren felt she needed to establish her bona-fides among the "progressives" in the Democratic Party, who have become increasingly anti-Israel. And what better way to do it than to instantly attack Pompeo on the "legality" of Israel's West Bank settlements?

A law professor for many years, Warren is well-versed in reading statutes and codes. As a professor of bankruptcy law, she can comprehend the Bankruptcy Code, so the Mandate for Palestine ought to be child's play. If she reads that Mandate, she will understand that the League of Nations established, on a sliver of land that had been identified with the Jewish people for two thousand years, and that had formerly been part of the Ottoman Empire, the Mandate for Palestine. That Palestine Mandate was entrusted to Great Britain, whose task it was to prepare that territory for independence as the Jewish National Home. There were other Mandates that were intended to create Arab states – Syria, Lebanon, Iraq – but the Mandate for Palestine was intended solely for the Jews. Warren would then want to know, as the thorough policy wonk she is, precisely what territory was to be included in that Mandate. Upon investigation, she would discover that the Mandate for Palestine applied to all the territory from Dan in the north to Beersheva in the south, and from the river Jordan in the east to the Mediterranean Sea in the West. In other words, all of what is present day Israel, and the entire West Bank, was included in the Mandate. Israel cannot be called the "occupier" of land that was assigned by the League of Nations to be part of the Jewish National Home, which would then become the State of Israel. When the League of Nations shut down, its successor organization, the United Nations, implicitly recognized in Article 80 of its Charter (the so-called Jewish People's article) the continuing in force of the Mandate for Palestine. The only thing that prevented the West Bank from becoming, as it legally should have, part of the

state of Israel in 1949, was that Jordan managed to hold onto the West Bank, and remained its “occupier” until 1967.

Elizabeth Warren never mentions the Mandate for Palestine, which is the indispensable document in judging the legality of the Israeli settlements. Nor does she mention, in any of her statements online, U.N. Resolution 242 and its significance in giving Israel the right to “secure and recognizable boundaries.” She has a duty to study both the Mandate, and Resolution 242, before making her self-assured and dismissive pronouncements about how those settlements “violate international law.” And she might also explain why those same settlements did not “violate international law” back in 2014, when she opposed making aid to Israel contingent on its halting of settlement building. Did she know something in 2014 about the settlements’ legality that she then forgot, or did she learn something since about their supposed illegality?

Then there is Warren’s remark that the settlements are not only “illegal,” but that they “make peace harder to achieve.” How does she, and the many others who mindlessly repeat this mantra – “settlements make peace harder to achieve” – know this? Because the Arabs – the Palestinians – keep telling them so.

What kind of “peace” is possible between Israel and the Palestinians? Some may insist that by squeezing itself back within the 1949 armistice lines, what Ambassador Abba Eban called “the lines of Auschwitz,” Israel makes peace more likely. But those who recognize that the war being waged, by all possible means, including terrorism, combat (qitaal), economic and diplomatic warfare, and demographic jihad, against Israel has no end, for Muslims, until the complete disappearance of the Jewish state, will not be so quick to put their trust in treaties. That is especially true because the Muslim model for all treaty-making with non-Muslims is the agreement that Muhammad reached with the Meccans at al-Hudaibiyya in 628 A.D., a treaty that was to last for ten

years, but which he broke after 18 months, attacking the Meccans as soon as he felt his forces were strong enough to win. Given that Muhammad is the Model of Conduct for all Muslims, Israel cannot rely on a peace treaty with Muslim Arabs to be kept indefinitely.

Instead, there is another and better way to maintain the peace between Israel and its neighbors. That is deterrence: the enemy's understanding that if Israel is attacked, it will respond, and much more devastatingly. Egypt and Syria now know what they did not know in October 1973, when they launched a surprise attack on Israel. Despite early losses, Israel delivered punishing blows in response. No Arab state since has tried to attack Israel; terror groups are a different matter, for their members are ready to be "martyrs." For rational actors – fanatic Muslim groups and groupuscules are not among them – deterrence works. It kept the peace between the United States and the Soviet Union for more than four decades after World War II. Israel must remain overwhelmingly, and obviously, stronger than its enemies for deterrence to be effective.

That is where the West Bank settlements come in. The 400,000 Jews who live in the West Bank, with all of the adults having undergone military training when fulfilling their mandatory service in the IDF, are an indispensable part of that deterrence. Those settlements throughout the West Bank, especially those strategically placed on the Judean hills, and overlooking, the Jordan Valley, are a powerful obstacle to invasion from the east. The settlements significantly improve Israel's deterrence, and a credible deterrence is the only guarantee that peace between Israel and the Arabs will be kept.

Warren claims the settlements will make peace "harder to achieve." She has things backwards. The settlements may make a "peace treaty" harder to achieve, but they will make the only peace that really matters, a peace based on deterrence, easier

to achieve.

In addition to the Mandate for Palestine (especially the Preamble and Articles 4 and 6), and U.N. Resolution 242, Elizabeth Warren should read about the treaty of Al-Hudaibiyya and its continuing significance, in Majid Khadduri's magisterial *War and Peace in the Law of Islam*. That's all the studying she need devote to the matter for now. The exam will be take-home. We're all hoping that Professor Warren earns an A.

First published in