

How the Mainstream Media Covered Secretary Pompeo on the Settlements

by Hugh Fitzgerald



When Secretary of State Pompeo announced that the Trump Administration did not view Israeli settlements as violating international law, the American media did its best to convince its audience that this was a radical departure from “40 years” of settled policy. The *New York Times* outdid itself, insisting in its headline that:

In Shift, U.S. Says Israeli Settlements in West Bank Do Not Violate International Law

and continued:

Secretary of State Mike Pompeo announced the reversal of decades of American policy that may doom any peace efforts.

But there was no great “shift,” no “reversal of decades of American policy.” What the *Times*, and the rest of the mainstream media, did not report, was Secretary Pompeo’s discussion of the history of American policy on the settlements. Why didn’t they? Because they didn’t want people to know that the Trump Administration was not engaged in some great shift, that over the past 40 years, the supposed illegality of settlements was American policy only from 1978 to 1981, and again, in the waning days of the Obama Administration, when Secretary Kerry, returning to the pre-1981 policy under Carter, declared on December 28, 2016, that the settlements were “inconsistent with international law.”

Here is what Secretary Pompeo stated that the *Times*, and the rest of the mainstream media, chose not to quote:

In 1978, the Carter administration categorically concluded that Israel’s establishment of civilian settlements was inconsistent with international law. However, in 1981, President Reagan disagreed with that conclusion and stated that he didn’t believe that the settlements were inherently illegal.

Subsequent administrations recognized that unrestrained settlement activity could be an obstacle to peace, but they wisely and prudently recognized that dwelling on legal positions didn’t advance peace. However, in December 2016, at the very end of the previous administration, Secretary Kerry changed decades of this careful, bipartisan approach by publicly reaffirming the supposed illegality of settlements.

The only part of his remarks that the media quoted was this, and sometimes they limited themselves to reporting only the last sentence:

After exploring all sides of the legal debate, this administration agrees with President Reagan. The establishment of Israeli civilian settlements in the West Bank is not per se inconsistent with international law.

CNN reported, like the *New York Times*, on a supposed “shift” in a “decades-long American policy. Nikki Hollander examined CNN’s disgraceful reporting [here](#).

CNN’s Jennifer Hansler, Nicole Gaouette and Jeremy Diamond twisted themselves into pretzels in order to present their own spin on the topic, going so far as to suggest that Pompeo was lying when he portrayed the history of US policy. They began by portentously proclaiming:

“US Secretary of State Mike Pompeo on Monday announced a major reversal of the US’ longstanding policy on Israeli settlements in the occupied West Bank, rejecting a 1978 State Department legal opinion that deemed the settlements “inconsistent with international law.”

But this was not a “major reversal” of policy: Pompeo was not announcing a new campaign to promote settlement building. He was presenting the administration’s legal opinion.

Nor was the 1978 legal opinion of Herbert J. Hansell, the State Department’s legal advisor at the time, “longstanding.” It was reversed by President Reagan less than three years after it was adopted by the Carter administration.

Pompeo was merely reversing a 3-year-old position by the Obama administration that re-adopted the old Hansell opinion.

Ignoring nearly 38 years of history in between, the journalists falsely suggest that the Hansell opinion was held

unwaveringly throughout four decades.

Instead, they suggest Pompeo is dishonest:

“Pompeo tried misleadingly to present the move as continuation of a previous president’s policies... [emphasis added]

And later:

“Pompeo tried to suggest that the Trump White House was simply echoing an earlier stand by Reagan, saying, ‘This administration agrees with President Reagan.’ But the Trump administration is going significantly farther.

“Since President Jimmy Carter, no president has described Israeli settlements as “illegal,” preferring to refer to them as “obstacles to peace” or “illegitimate,” but no president, including Reagan, reversed the 1978 State Department finding. [emphasis added]

They pretend that the Trump administration is the first to reverse that opinion, which they cunningly inflate by terming it a “finding.”

But an opinion is not a legal document and does not need a written and stamped repudiation to reverse it.

The State Department makes clear that:

Under the Constitution, the President of the United States determines U.S. foreign policy. The Secretary of State, appointed by the President with the advice and consent of the Senate, is the President’s chief foreign affairs adviser. The Secretary carries out the President’s foreign policies through the State Department and the Foreign Service of the United States.

By clearly rebuking the Carter Administration’s stance on settlements, Reagan thus effectively reversed it. And no

subsequent administration endorsed it until Kerry's comments three years ago.

To ascribe dishonesty to Secretary Pompeo, whom CNN's reporters described as having "tried misleadingly" to "pretend" that his statement was merely a "continuation of a previous president's policies," was outrageous, but don't expect CNN to acknowledge the outrage. Pompeo was not "misleading," but stating a fact: the Trump view of the settlements is the same one that President Reagan declared in 1981: the settlements are not illegal. And until December 28, 2016, that is, for 35 years straight, every administration held to the same view: the settlements are not illegal. Opinions differed as to whether they constituted obstacles to "peace," but not as to their legality. It was only on December 28, 2016 that Secretary of State Kerry declared that the policy – a new policy, one that differed from that which had obtained for the previous 35 years – of the lame duck Obama administration was to view the settlements as "illegal." And that policy, in turn, of regarding the settlements as "illegal" lasted all of three years, just as long as the same policy had lasted under Carter. For 35 years, every American administration – under Reagan, under George H.W. Bush, under Clinton, under George Bush, and even under Obama, until his last month in office – had refused to describe the settlements as illegal.

But this did not stop the *New York Times*, and CNN, and others, too, from constantly referring to what they outrageously described as a "reversal of 40 years of American policy." For example, Matthew Lee of the AP reported:

The Trump administration on Monday said it no longer considers Israeli settlements in the West Bank to be a violation of international law, reversing four decades of American policy and further undermining the Palestinians' effort to gain statehood.

And later in his piece, Lee continue to misinform:

The 1978 legal opinion on settlements is known as the Hansell Memorandum. It has been the basis for more than 40 years of carefully worded opposition to settlement construction that had varied in its tone and strength, depending on the president's position.

No, and no. Secretary Pompeo did not “reverse four decades of American policy.” The Hansell memorandum of 1978 never was the basis for “more than 40 years of carefully worded opposition” to settlement construction. The Hansell memorandum was categorically rejected by President Reagan within three years of its being composed.

The honest way for the mainstream media to have covered Secretary Pompeo’s announcement was simple: they ought to have quoted his paragraphs describing the history of American policy on the legality of the settlements. He said exactly what the public needed to know, which was exactly what the American media did not want that public to learn about. They ought to have titled their reports: “Trump Administration Returns To 35-Year Old American Policy: Israeli Settlements Do Not Violate International Law” and continued in the same vein: “Returning to the policy first enunciated by President Reagan in 1981, and adhered to by every administration since, until Secretary Kerry’s shift on December 28, 2016, today Secretary Pompeo announced that Israeli settlements ‘do not violate international law.’”

What should now be said, yet again, by Secretary Pompeo, in light of the dishonest coverage of his announcement? First, he should note “certain deficiencies in how my previous announcement was reported in the media.” And then continue thus: “Herbert Hansell, a State Department lawyer, had in 1978, during the Carter Administration, produced a legal opinion that declared Israeli settlements to be ‘illegal’

under international law. Hansell never addressed, in his opinion, the status of the West Bank according to the Mandate for Palestine, and why that mattered so much. Nor did Hansell discuss the accepted international rules about post-bellum adjustments following wars of self-defense – I am thinking of the many such adjustments after World War I and, even more, after World War II – and in particular, the significance of the phrase ‘secure and recognizable boundaries’ in U.N. Resolution 242 (adopted after the Six-Day War), which the Resolution’s author, Lord Caradon, explained as justifying territorial adjustments, including some in the West Bank, in order to provide Israel with those ‘secure [i.e., defensible] boundaries’ to which it had a right.”

We must protest against a mainstream media that misrepresents American foreign policy on a matter of such moment. What Secretary Pompeo announced was not a “drastic shift” in “four decades of American policy” – as the *New York Times*, CNN, AP, and Reuters all claim – but, rather, a return to what had been settled American policy from 1981 to 2016, 35 years in which successive administrations, even if they did not always regard Israel’s settlement policy as wise, never described those settlements as “illegal.”

When American policymakers finally come to the melancholy conclusion that peace between Israel and the “Palestinians” can best be maintained through deterrence, rather than through peace treaties that the Muslim side, following the example of Muhammad, will breach whenever they deem it suits their interests, they will not only declare the settlements legal, as Secretary Pompeo has just done but, as a matter of statecraft, recognize their wisdom. For 750,000 Israeli now live in the West Bank and in East Jerusalem, with almost all of the adults, men and women, having served in the military, where they received extensive training; they form an important part of Israel’s deterrence, as do those many settlements in the West Bank that were deliberately placed on commanding

heights, or made to lie athwart invasion routes. In strengthening Israel's policy of deterrence, the settlements are not "obstacles to peace," but instead make peace, and its maintenance, more likely.

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