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## Human Rights Council

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Agenda item 7

### Human rights situation in Palestine and other occupied Arab territories

## Written statement\* submitted by United Nations Watch, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 February 2020]

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\* Issued as received, in the language(s) of submission only.



## **Why the blacklist violates United Nations (U.N.) principles and International Law**

In Resolution 31/36, sponsored by the Arab Group, the OIC, the Sudan, Bolivarian Republic of Venezuela, Algeria, Bahrain, Plurinational State of Bolivia, Chad, Cuba, Djibouti, Ecuador, Egypt, and Libya, the Human Rights Council (HRC) requested the High Commissioner to produce a database of all businesses that “directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements.”

The goal of the database is to pressure Israel to withdraw from the settlements—a move which according to the Oslo Accords should be taken only in the context of final status negotiations.

Even those opposed to settlements have reason to strongly object to the discriminatory blacklist, including on the following grounds.

### **Violates UN principles of equality and non-discrimination**

The UN Charter states that the UN “is based on the principle of sovereign equality of all its members.”<sup>1</sup> Likewise, the founding principles of the HRC include “ensuring universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization.”<sup>2</sup> Against these founding principles, the blacklist is designed to further the discriminatory BDS campaign which seeks to advance the Palestinian political agenda by delegitimizing Israel.

There are more than 100 disputed territories around the world, many involving occupations and settlements. Yet in no other case has the UN lobbied for the creation of a database of companies operating in the contested territory.

For example, Morocco occupied Western Sahara in 1974. Although the Security Council considers the territory occupied, Morocco has established significant settlements there, which the EU supports in the following ways:<sup>3</sup>

- The EU pays Morocco €40 million per year for the right to fish in Morocco’s waters, expressly including Western Sahara.
- The EU provides Morocco with hundreds of millions of Euros in foreign aid without any restriction that the funds not be used in Western Sahara.

Similarly, Turkey occupied northern Cyprus in 1974. Although, the Security Council considers Turkish control illegal, Turkey established settlements which the EU actively supports in the following ways:<sup>4</sup>

- Turkey established universities in the territory, many of which are branches of mainland Turkish universities and have joint programs with major British institutions.
- The EU directly funds Turkish Cypriots, including settlers, at a rate of €28 million per year in the form of, *inter alia*, student scholarships and technical assistance to businesses.
- The EU helps Turkish settlers exploit natural resources in northern Cyprus.

UN silence on business activity in these occupied territories shows that the blacklist is not about human rights. Some have objected to the term “blacklist,” claiming the settlements

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<sup>1</sup> UN Charter, Article 2

<sup>2</sup> A/Res/60/251.

<sup>3</sup> Eugene Kontorovich, “Economic Dealings with Occupied Territories,” *Columbia Journal of Transnational Law* 53, 584-637, pp. 600-08, 2015.

<sup>4</sup> *Id.*, p. 615-21

database is merely about corporate transparency.<sup>5</sup> If that were the case, however, it would not be limited to Israel.

## **Business in settlements is not illegal**

The above examples demonstrate that there is no international law prohibition against business in settlements. In fact, Article 43 of the 1907 Hague Convention obligates the occupying power to “restore and ensure, as far as possible, public order and safety.” This is understood to permit the occupying power to build infrastructure, including roads, sanitation, communications and security.<sup>6</sup> Similarly, the Fourth Geneva Convention authorizes an occupying power to do business in territory it controls.<sup>7</sup>

These principles have been confirmed in several legal rulings, including:

- A 2002 memo by the UN’s legal advisor concerning Western Sahara.<sup>8</sup>
- A 2013 ruling by the French Court of Appeals in Versailles confirming that the Geneva Conventions do not bar private economic activity in settlements.<sup>9</sup>
- A 2014 ruling by another French court that settlement products and their manufacture are not illegal.<sup>10</sup>
- A 2014 ruling by the United Kingdom of Great Britain and Northern Ireland Supreme Court that the sale of settlement products does not aid international law violations.<sup>11</sup>

## **The guiding principles on business and human rights do not advocate blacklists**

Significantly, violation of Palestinian human rights is not a condition for inclusion on the blacklist. Pro-Palestinian groups claim this is because “abuses are inherent to the settlement enterprise.”<sup>12</sup> However, such a blanket prohibition on doing business with occupied territories is not supported by state practice, international law or the Guiding Principles.

In fact, the Guiding Principles expressly envision the continued operation of businesses in areas affected by conflict. They merely call on businesses to conduct due diligence to assess the human rights impact of their activities.<sup>13</sup>

Significantly, the burden to conduct due diligence is on the business itself, not on third parties like the UN. The Guiding Principles suggest that a business can “consider” withdrawing from a conflict-area in limited circumstance where it makes an internal business decision that it cannot protect human rights. Even then, the business must examine the “adverse human rights impact” of withdrawing.<sup>14</sup> Both Israelis and Palestinians may be adversely impacted by withdrawal of business.

The Guiding Principles do not consider the creation of a database of businesses operating in conflict areas. Likewise, the Working Group on Business and Human Rights’ statement on

<sup>5</sup> “Joint NGO Statement in Support of the UN Human Rights Database on Business Activities related to Settlements in the Occupied Palestinian Territory,” *Amnesty International*, Nov. 30, 2017.

<sup>6</sup> “Submission of the Institute of NGO Research, Position Paper Regarding Preparation of a Discriminatory Blacklist Pursuant to UNHRC Resolution 31/36,” *NGO Monitor*, Jan. 2, 2017.

<sup>7</sup> “Who Else Profits: The Scope of European and Multinational Business in Occupied Territories,” *Kohelet Policy Forum*, June 2017.

<sup>8</sup> Kontorovich, pp. 602-03.

<sup>9</sup> *Id.*, p. 633.

<sup>10</sup> *Id.*, p. 634.

<sup>11</sup> *Id.*, pp. 631-33.

<sup>12</sup> “Israel/Palestine: UN Settlement Business Data Can Stem Abuses,” *Human Rights Watch*, Nov. 28, 2017; see also “Palestinian Organizations Support Release of UN Database Report and Call for Third State Action to End Corporate Complicity in Occupation,” *Al-Haq*, January 2018.

<sup>13</sup> Guiding Principles on Business and Human Rights, Principles 7; 17-19.

<sup>14</sup> *Id.* at Principle 19.

Israel accepts that businesses are entitled to operate in occupied territories and does not advocate a blacklist.<sup>15</sup>

### **Violation of due process**

The only published criteria for inclusion on the blacklist is the vague and overbroad language of paragraph 96 of the HRC's Report on Settlements.<sup>16</sup> The referenced activities (construction, security services, utilities, banking, etc.) are deemed problematic because they "raise particular human rights violations concerns," without specifying how or why. In his January 26, 2018 report, then-High Commissioner Zeid Hussein admitted that the selection criteria is not based on human rights violations, but on involvement in listed activities.<sup>17</sup>

### **HRC is not authorized to impose sanctions**

Pursuant to Article 41 of the UN Charter, the Security Council is exclusively authorized to impose sanctions on a Member State. The HRC has no such authority. While some have argued that the blacklist is not a sanction,<sup>18</sup> Resolution 31/36 expressly references Paragraph 117 of the February 2013 report of the Fact-Finding Mission on Settlements,<sup>19</sup> recommending that private companies "terminat[e] their business interests in the settlements." This follows the call in Paragraph 12 for Israel to "immediately initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory." Therefore, the goal clearly is to economically pressure Israel to withdraw from settlements.

### **Promotes violation of the Oslo accords**

Article 31 of the 1995 Interim Agreement reserves a number of important issues for permanent status negotiations, including settlements and borders.<sup>20</sup> Pressuring Israel to unilaterally withdraw from settlements contravenes this provision.

### **Impairs Israel's right to self-defense**

Israel's "inherent right of individual or collective self-defense" under international law is affirmed by Article 51 of the U.N. Charter. Terrorist attacks against Israel trigger this right. Yet the blacklist targets Israel's security and self-defense infrastructure, thereby undermining its ability to protect its citizens. Furthermore, by including on the blacklist companies that provide security to Israeli settlements, the UNHRC implicitly legitimizes violence and murder against Israeli civilians beyond the green line—clear violations of international law.

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<sup>15</sup> "Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory," *Working Group on the issue of human rights and transnational corporations and other business enterprises*, June 6, 2014. We note that the Working Group has not issued a similar statement with respect to any other occupied territory.

<sup>16</sup> <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/DatabaseHRC3136.aspx>.

<sup>17</sup> A/HRC/37/39, Report of the High Commissioner pursuant to Resolution 31/36, Jan. 26, 2018, ¶ 9.

<sup>18</sup> Valentina Azarova, "Why the UN is setting up a database of international businesses operating in Israeli settlements," *The Conversation*, Dec. 8, 2017.

<sup>19</sup> A/HRC/22/63.

<sup>20</sup> "Israel-Palestinian Interim Agreement on the West Bank and the Gaza Strip," Sep. 28, 1995.