

# INTRODUCTION

## WHY BUSINESS ACTIVITY IN SETTLEMENTS IS UBIQUITOUS, AND WHY IT MATTERS

On March 24, 2016, at its 31st session, the UN General Assembly Human Rights Council (UNHRC) adopted Resolution 31/36, which instructed the High Commissioner for Human Rights to prepare a “database” of business enterprises.<sup>1</sup> The database will focus on one particular issue, which an earlier Council resolution claimed raises human rights issues: that “business enterprises have directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements.”<sup>2</sup>

Such an activity—making blacklists of private organizations—is absolutely unprecedented for the HRC. And the current “research” program is focused on only one context: companies working in areas designated as being under Israeli civil jurisdiction in the West Bank under the Oslo Accords. The General Assembly has allocated \$138,700 to cover the costs of this research project. The clear goal of the Council in producing such a list is to create negative reputational consequences for the listed companies, and ultimately to trigger sanctions against targeted companies through subsequent action by the Security Council or national governments.<sup>3</sup>

If business activity that “facilitates” or “profits” from settlement activity raises human rights issues, then the Commission’s current research program is unjustifiably narrow in its scope, and fails to capture the full context and magnitude of business activities that support settlement enterprises in occupied territories. The narrow focus of the report’s mandate undermines both the legal and practical value of the resulting database. It is also likely to produce consequences both unexpected and undesired by the Council and member states.

Every situation of prolonged belligerent occupation in the world involved widespread “settlement” activity—a non-technical term to refer generally to the migration of civilians from the occupying power into the territory.<sup>4</sup> **In all of these occupations, business enterprises, including third-country firms, play a major economic role.** Many of these settlement enterprises have resulted in the large-scale ethnic cleansing or displacement of the occupied population or subjected it to widespread and massive human rights violations that have been amply documented.

This report is designed to put the HRC’s “database” project in a global perspective. It examines business activity in support of settlement enterprises in occupied territories around the world. This study reveals that such business is ubiquitous and involves some of the world’s largest industrial, financial services, transport, and other major publicly traded companies. Such companies include Siemens, Crédit Agricole, BNP Paribas, Santander, Vodafone, Renault, Veolia, Trelleborg, Wärtsilä, and Turkish Airlines, to take just a few examples.

As a matter of human rights, the Council's focus on Israel is difficult to understand. There are numerous territories around the world currently under belligerent occupation, where the occupying power has allowed or facilitated the movement of settlers into the occupied territory. In all these cases, this is done over the vigorous objection of the occupied party and is at odds with its sovereignty or self-determination.

Among the most salient examples are Morocco's occupation of Western Sahara and Turkey's of northern Cyprus. Both of these have seen massive government-backed settlement enterprises that dwarf anything in the West Bank. The *majority* of the population in these territories now consists of settlers, fundamentally undermining the possibility of self-determination or a political solution. There are also settlers in Armenian-occupied Nagorno-Karabakh and the Occupied Ukrainian Territories . In all these cases, foreign companies, quite commonly European ones, actively support the settlement enterprise. These activities include extracting natural resources from the territories, providing infrastructure support to the occupying power, and in general, making the settlement enterprises more economically viable.

The companies involved have a global profile and valuable brands, and they pride themselves on a respect for human rights. Moreover, many of these companies have significant links to governments of their home countries, often being partially owned or controlled by the state. **If commercial support for settlement enterprises is a human rights issue, it implicates the leading executives around the world, and in many cases the home states that support them, the investors who fund them, and more.**

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## WHAT IT MEANS

The evidence revealed in this report can be explained in two ways. It could demonstrate the fundamental falseness of the assumption underlying the Council's database—that businesses violate human rights when they engage in their ordinary business practices under the jurisdiction of an occupying power. On the other hand, it could demonstrate the Council's utter indifference to human rights around the world, with one particular exception. We believe the first explanation is by far the stronger one. But either way, the evidence in this report shows that the Council cannot in good faith continue its current project under these parameters.

## NOT ILLEGAL

What the widespread activity documented in this report demonstrates is that such business activity is certainly not a human rights issue, let alone illegal. There is a clear reason why the massive support of multinational corporations for occupation and settlements worldwide has not led to any protest or even discussion in the Human Rights Council or other international organizations: it is in fact entirely legal and consistent with human rights norms.

The corporations' home countries have taken no steps to stop this, **nor has this activity ever been criticized by the Human Rights Council.** Indeed, the companies involved have in many cases received explicit advice from international law experts, and even their home countries' foreign ministries, that doing business under the jurisdiction of any occupying power that denies people self-determination is *not* a violation of international law or human rights. International financial institutions, such as the World Bank, International Finance Corporation (IFC), and numerous national and international development banks, have extended loans of hundreds of millions and billions of dollars to banks and corporations doing business in occupied territories around the world.

A long line of imposing authorities have held that companies' doing business in occupied territories does not raise human rights issues.<sup>5</sup> This was the conclusion of the UN's own legal advisor in a 2002 memo on Western Sahara,<sup>6</sup> and of recent rulings by the UK Supreme Court and an important French appellate court in cases concerning the West Bank.<sup>7</sup> Moreover, the Fourth Geneva Convention clearly authorizes the occupying power to do business in the territory it controls, and gives the occupied people no veto over this.<sup>8</sup>

## HUMAN RIGHTS ISSUES MUST BE RELEVANT TO ALL HUMANS

Yet the HRC's pending database is premised on the notion that such companies must somehow be shamed or sanctioned. This project fundamentally discredits the Council. This is not because it maliciously singles out the Jewish State. The Council's record on that score is well-established and cannot be much worsened.

This organization is named the United Nations *Human Rights Council*. The report that is being prepared is essentially an admission that it does not care about the rights of humans across nations, that it does not treat people equally by virtue of their common humanity. If businesses involved in settlement enterprises are a human rights problem, certainly companies working in Israeli-controlled areas should not be immune from scrutiny. If it *is* a human rights problem, the Council has no basis to ignore the same problem wherever it appears in the world—except Israel.

## METHODOLOGY

The UNHRC's database will focus on "business activities and related issues that raise particular human rights violations concerns." The activities identified by the Council cover any kind of activity under Israeli auspices—from providing "construction equipment," to "banking and financial operations," to the "use of natural resources," all in the vague context of "maintain[ing]" settlements.<sup>9</sup> Even the "use" of enterprises owned "partially" by settlers

can in itself be a human rights violation in the Council's understanding. This definition is legally baseless, and entirely untethered to the Fourth Geneva Convention's prohibition on "deporting or transferring" population into an occupied territory, which is the basis of the settlements controversy.<sup>10</sup>

The Council's methodology is vastly indeterminate and overbroad. Yet for purposes of consistency, this report uses the same standard. However, the focus is on enterprises that work directly with the occupying power or provide substantial economic support to its settlement enterprise.

Because there is no prohibition of business activity that supports "settlements"—contrary to the UNHRC's apparent view in the context of Israel, but consistent with its apparent position overall—such activity is quite common, and indeed, for most European companies involved, unremarkable. Many of these companies proudly publicize their settlement-related operations on their websites.

This report is not intended to be an exhaustive "database" of such activities. For reasons of space and resources, it is merely a suggestive sampling of the breadth and depth of such activity. **But the forty-four companies listed here are just the tip of the iceberg.** The focus in this report is mostly on third-country firms—those not based in the occupying power—with an emphasis on European firms, because of the European Union's important role as a "normative power" particularly concerned about corporate human rights issues.

This report draws exclusively from publicly available sources, such as news articles, corporate statements, and NGO and governmental reports. This report is but a preliminary inquiry into business activities in occupied territories. It will be updated periodically and expanded to include a fuller list of businesses and additional occupied territories.

## THE COUNCIL IS CREATING A PRECEDENT THAT WILL BE USED AGAINST COMPANIES AROUND THE WORLD IN CONTEXTS UNRELATED TO ISRAEL

While the Council may wish, for its own reasons, to confine its discussion to Israel, it will not stay confined. With the publication of this report, the discussion of companies involved in settlements in occupied territories becomes global. National governments and activists concerned with those territories will demand that those companies receive the same treatment as the ones in your database will receive. They will pursue this goal in courts, in shareholder meetings, and here before this Council. Many countries, including those that did not oppose Res. 31/36, will find their executives, their businesses, and their governments ensnared. The beginnings of this process can already be seen in legal action by the Fronte Polisario against the European Commission, where the latter was forced by the European Court of Justice to apply the standards it developed in an "Israel only" context to other situations.<sup>11</sup> Further litigation by the Polisario is pending. The consequences of this litigation have already disrupted the EU's trade with Morocco. The Council's database will only give further fuel to the misguided legal theories behind this litigation and further compromise the Commission's trade prospects.

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The governments of Azerbaijan and Ukraine have also become increasingly active in protesting business activity in their occupied territories. The publication of the database, and any subsequent action by the UN or member states based on it, will serve as a precedent that these countries will use in litigation and diplomatic pressure against many of the companies listed here.

Law knows no boundaries. Precedents will be used outside the contexts in which they are established. The ECJ proceedings and other cases<sup>12</sup> show courts will not confine themselves to the political limits set by the UNHRC. This report gives a glimpse of the economic harm that will be caused when the UNHRC's "Israel rule" spills out into the larger world.

## CONCLUSION

As this report shows, the kind of business activity on which the Council is composing a "database" on the grounds that it violates human rights, is ubiquitous in occupied territories around the world. Yet in all of the occupation/settlements contexts examined in this study, the Council has never mentioned the issue of foreign business activity in its detailed reports on the human rights situations in these territories. If such activity—which in all these cases contributes to the occupying power's ongoing control of the territory and dispossession of the occupied people—is truly a human rights issue, these massive omissions suggest a complete disregard by the Council for the human rights of people around the world. In such a case, the Council is not even worthy of its name.

On the other hand, such omission would be justifiable if, as argued here, otherwise legitimate business activity does not become illegal when it supports a contested political or territorial situation. In such a case, it would only be the Council's inquiry into Israel that is unjustified and illegitimate. Instead, it would be just the most egregious example of the Council's "practice of wrongly singling out Israel for criticism," which US Ambassador to the UN Nikki Haley has recently demanded must end.<sup>13</sup> Such a practice is, as Ambassador Haley says, "seriously wrong," and deprives the resulting database of any legitimacy.