



# Illegal Business

Refuting allegations of anti-Israel sentiments levelled against the UN database of business enterprises operating in the Occupied Palestinian Territory, including East Jerusalem



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## A. Introduction

On 28 February 2020, the High Commissioner for Human Rights released the report: *Database of all business enterprises involved in the activities detailed in paragraph 96 of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem* (UN Doc. [A/HRC/43/71](#)).

The report was released for consideration at the 43<sup>rd</sup> session of the Human Rights Council and provides a database which lists 112 business enterprises engaged in certain specified activities related to the Israeli settlements in the Occupied Palestinian Territory.

Shortly after its release, Israel suspended discussions with the High Commissioner for Human Rights and allegations were subsequently levelled accusing the High Commissioner and the report of being anti-Israel. Accordingly, this article will review the reactions to the database, the origins of the database, its underlying purpose and intentions, and the violations concerned, in order to ascertain whether there is any merit to these allegations or if they are instead wholly unfounded.

## B. Reactions to the Release of the Database

There were swift reactions to the release of the database at the 43<sup>rd</sup> session of the Human Rights Council, with many states voicing support yet certain states condemning it.

Several groups expressed support for the database, including the Organisation of Islamic Cooperation, African Union, and the Group of Arab States. States that expressed support for the database include the State of Palestine, Pakistan, Qatar, Afghanistan, Libya, Bangladesh, Sudan, Venezuela, Mauritania, Iraq, South Africa, Ecuador, Jordan, Tunisia, Egypt, Iran, Oman, Algeria, Maldives, Lebanon, Yemen, and China. The State of Palestine was very firm in its support of the database and called for its annual update.

Israel expressed strong views against the database at the 43<sup>rd</sup> session and openly called it “anti-Semitic”; however, Israel was not alone in its opposition as Brazil also expressed regret at the release of the database when explaining its vote on agenda Item 7 resolutions, after the vote.

### **C. The Origin of the Database**

The database is concerned with certain specified activities originally derived from paragraph 96 of the independent international fact-finding mission (**‘Fact-Finding Mission’**) to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (UN Doc: [A/HRC/22/63](#)). The Fact-Finding Mission, in their report, had listed these specified activities as raising particular human rights concerns in the Occupied Palestinian Territory and stated as follows at paragraph 96:

*“96. Information gathered by the mission showed that business enterprises have, directly and indirectly, enabled, facilitated and profited from the construction and growth of the settlements. In addition to the previously mentioned violations of Palestinian worker rights, the mission identified a number of business activities and related issues that raise particular human rights violations concerns. They include:*

- *The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructures*
- *The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements*
- *The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olives groves and crops*
- *The supply of security services, equipment and materials to enterprises operating in settlements*
- *The provision of services and utilities supporting the maintenance and existence of settlements, including transport*
- *Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses*
- *The use of natural resources, in particular water and land, for business purposes*
- *Pollution, and the dumping of waste in or its transfer to Palestinian villages*
- *Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints*
- *Use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements”*

At the 31<sup>st</sup> session of the Human Rights Council, resolution 31/36 (UN Doc. A/HRC/RES/31/36) was adopted which recommended that the High Commissioner for Human Rights produce a database of all business enterprises involved in the above listed activities. Paragraph 17 of the resolution provides as follows:

*“17. Requests the United Nations High Commissioner for Human Rights, in close consultation with the Working Group on the issue of human rights and transnational corporations and other business enterprises, in follow-up to the report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, and as a necessary step for the implementation of the recommendation contained in paragraph 117 thereof, to produce a database of all business enterprises involved in the activities detailed in paragraph 96 of the afore-mentioned report, to be updated annually, and to transmit the data therein in the form of a report to the Council at its thirty-fourth session;”*

#### **D. The Intention of the Human Rights Council in Calling for the Database**

In ascertaining whether the database is anti-Israel, regard must be given to the intention of the Human Rights Council in calling for the database under resolution 31/36.

It is, therefore, important to note the reference in paragraph 17 of the resolution to the database being “a necessary step” for the implementation of paragraph 117 of the Fact-Finding Mission’s report. The relevant part of paragraph 117 of the Fact-Finding Mission’s report states as follows:

*“... The mission calls upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements respect human rights throughout their operations...”*

Accordingly, paragraph 17 of the resolution must be read in conjunction with paragraphs 96 and 117 of the Fact-Finding Mission’s report. In doing so, the reasonable interpretation is that the database was intended to identify business enterprises engaging in the listed activities related to Israeli settlements in the Occupied Palestinian Territory as “a necessary step” to enable UN member states to take appropriate measures to ensure that the identified enterprises domiciled in their territory or under their jurisdiction would adhere to human rights throughout their operation.

In ascertaining whether the database was intended as an anti-Israel campaign, it is also important to note the positions of member states of the Human Rights Council at the time of the adoption of resolution 31/36. The voting outcome at the 31<sup>st</sup> session of the Human Rights Council for resolution 31/36 was 32 yes, 0 no, and 15 abstentions. The important emphasis



here is that none of the member states voted against the resolution and if it was considered to be anti-Israel, surely at least 1 member state would have voted against it.

### **E. The Purpose of the Database**

Finally, in ascertaining whether the database is anti-Israel, regard must be given to the High Commissioner's report and the database itself. The origins of the 112 business enterprises listed were as follows: *The United State of America: 6, Netherlands: 4, United Kingdom of Great Britain & Northern Ireland: 3, France: 3, Thailand: 1, and Israel: 95.*

The database includes business enterprises from jurisdictions other than Israel, specifically the United States, Netherlands, the United Kingdom, France and Thailand. It focuses specifically on identifying business enterprises engaging in the listed activities under paragraph 96 of the Fact-Finding Mission's report, which were regarded as raising particular human rights violations concerns.

The database identifies these business enterprises so that Israel, the United States, Netherlands, the United Kingdom, France and Thailand may take appropriate measures to ensure that these enterprises adhere to human rights throughout their operations, in accordance with paragraph 117 of the Fact-Finding Missions report.

In accordance with resolution 31/36, the database is to be updated annually and the list of business enterprises may change from time to time. The database is, therefore, a long-term measure to facilitate UN member states in aiding in the protection against human rights violations by business enterprises in the Occupied Palestinian Territory.

### **F. Nature of the Violations**

In comprehending the significance of the database, it is important to understand the nature of the violations that various business enterprises perpetrate in the Occupied Palestinian Territory. These violations are discussed in paragraph 96 of the earlier cited Fact-Finding Mission's report (UN Doc: [A/HRC/22/63](#)) and has reaffirmed the complicity of certain business enterprises in Israel's illegal settlement activities, as the occupying power. The illegal settlement activities are captured in several UN reports, including the following recent reports:

- i. UN Doc. A/HRC/43/67: Israeli Settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan; and
- ii. UN Doc. A/73/87-E/2018/69: Economic and social repercussions of the Israeli occupation on the living conditions of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan.

Business enterprises have been found complicit in human rights violations which fall under the spectrum of Israel's illegal occupation and settlement activities in the Occupied Palestinian

Territory, including the construction of the wall, surveillance activities, demolition of properties, security services, maintenance of settlements, financial operations, use of Palestinian natural resources, pollution, disadvantaging Palestinian business enterprises, and expanding Israeli settlements.

Figure 1: Violations by business enterprises in the Occupied Palestinian Territory



## **G. Conclusion**

In light of the above discussion, Geneva International Centre for Justice ('GICJ') is of the view that there is no anti-Israel intent or purpose that can reasonably be derived from the High Commissioner's report which sets out the database (UN Doc: A/HRC/43/71), its corresponding authorising resolution (UN Doc: A/HRC/RES/31/36), and the report of the Fact-Finding Mission (UN Doc: A/HRC/22/63) which gave rise to the resolution.

GICJ finds that the database serves a legitimate purpose which aims to facilitate UN member states' compliance with the recommendation in paragraph 117 of the Fact-Finding Mission's report by holding business enterprises domiciled within their territory or jurisdiction to account, in order to ensure that they adhere to human rights throughout their operations in the Occupied Palestinian Territory.

GICJ affirms the importance of the database and its annual update, given the persistence and gravity of Israel's illegal occupation and settlement activities in the Occupied Palestinian Territory since 1967 and the complicity of certain business enterprises in violating the human rights of Palestinians within the occupied territories.

The international community, particularly the United Nations, must not be dissuaded or misled by suggestions that the database is anti-Israel as that is clearly not the case and deludes realities. The important facts are as follows:

- i. Israel's occupation and settlement activities in the Occupied Palestinian Territory are in clear violation of international law, including the United Nations Charter and the Fourth Geneva Convention of 1949, and in violation of the human rights of Palestinians within the occupied territories;
- ii. Certain business enterprises are assisting Israel in its illegal occupation and settlement activities and therefore, complicit in violating the human rights of Palestinians within these occupied territories.

These basic facts go to the very heart of the database and render it a necessary step towards the protection of the human rights of Palestinians within the Occupied Palestinian Territory.

GICJ, therefore, calls on the international community and especially the United Nations to stand firmly in support of the database and to dismiss the suggestion that it is "anti-Israel" as frivolous as it is completely without merit.

