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Statement by Richard Falk
SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN THE PALESTINIAN TERRITORIES OCCUPIED SINCE 1967

68th session of the General Assembly
Third Committee
Item # 69 (c)

29 October 2013
New York
Introduction

Today I present my final report to this Assembly as Special Rapporteur on the situation of human rights in the Palestinian territories since 1967. I would like at the outset to highlight the importance to the work of Special Rapporteur of visiting Palestine and speaking face to face with the people with whom his or her mandate is concerned. In my five years as Special Rapporteur, despite repeated efforts, I have on only one occasion been able to visit Palestine, and then only Gaza via Egypt. This was extremely valuable from the perspective of understanding the impact of occupation on human rights.

My period as Special Rapporteur has been marked by the consistent non-cooperation of the Government of Israel with my mandate. I am very concerned that the efforts of future Special Rapporteurs should not be allowed to be hampered by a continuation of this pattern of non-cooperation that contradicts Israel’s obligations to cooperate with the United Nations in relation to the official undertakings of the Organization. On this occasion, I reiterate my appeal to the United Nations to address this issue as effectively as possible before next March, when my successor takes up the complex challenge of fulfilling this mandate, which has existed since 1993.

The inalienable right of Palestinians to self-determination was unmistakeably furthered when this Assembly voted to confer on Palestine the status of non-Member Observer State in November 2012. With this significant development in mind, it is appropriate to rethink the terminology used with respect to the Israeli-Palestinian conflict, in light of the fact that the continuing Israeli settlement in Palestinian territory is by now seemingly, at least partially, irreversible. Therefore, continuing to speak of the occupied Palestinian territories with the implication that the belligerent occupation is temporary, is misleading in a context where a deliberate Israeli policy of creeping annexation has been discernible over a prolonged period of time.

Israel’s persistent violations of its obligations as an occupying Power, under international human rights law and international humanitarian law, with the particular relevance of the settlements, have been repeatedly highlighted and specified in Security Council and General Assembly resolutions. In this context, the international community, and the United Nations
especially, bears a heavy responsibility for safeguarding human rights, including the territorial rights of the Palestinian people, by ensuring that Israel fully respects its obligations as the occupying power under international law.

Corporate complicity
I have dedicated the main part of this report to further develop a subject which I broached in my last report to the General Assembly; namely that of international corporations which contribute to, and profit from, their dealing with illegal Israeli settlements in Palestinian territory. More specifically, the present report sets forth a model for legal analysis of potential ways in which such corporations might be held accountable for contributing to violations of international law, in particular, international criminal law. The report considers the activities of international corporations in relation to the settlements within the normative framework of international humanitarian law, international human rights law and international criminal law. In addition, the analysis is informed by the Guiding Principles on Business and Human Rights, and note is taken of important self-regulating mechanisms such as the UN Global Compact.

In order to elaborate on the potential legal implication of corporations in international crimes, the method employed in this report is to use two examples by way of case studies, so as to illustrate how the model works in the context of legal analysis. The hope is that not only will the two companies highlighted in the report, bring their activities in line with international law, but more widely, that their examples will serve to prompt other corporations with similar activities in the settlements to review their operations in regards to the settlements from the perspective of international law. In addition, it is noted that the duty to protect includes an obligation on States to protect against human rights abuses by private actors, such as companies, and that States must take appropriate steps to prevent, investigate, punish and redress such abuses.

In the first case study of Dexia, a European banking group, the analysis considers firstly whether the activities, including loans benefitting settlements granted by Dexia Israel, as a subsidiary, can be imputed to the Dexia Group. Concluding that in this instance there is a strong case that activities can be imputed to the European banking Group, given the relationship between the Group and its subsidiary, the analysis goes on to explore the
possible international criminal responsibility of individuals of the Dexia Group for activities of Dexia Israel. Prior to this presentation of the report, it was shared with both companies in the case studies. I would like to take this opportunity to respectfully acknowledge information received to the effect that Dexia Israel is not a retail bank, and is not a provider of mortgages. However, notwithstanding the clarification of the scope of Dexia Israel’s specific activities, the general analysis stands in respect to the type of banking activities that contribute to illegal settlements. Such activities include the granting of loans to settlements which is not a disputed part of Dexia Israel’s services. The analysis also considers the obligations of France and Belgium to ensure respect for human rights and humanitarian law, in light of their respective part-ownership of the Dexia Group.

In the second case study of the privately-held Re/Max real estate company based in the United States with an Israeli franchise, the activities in question are the promotion, advertising, and sale of properties in Israeli settlements. By these activities it is strongly arguable that Re/Max contributes to the transfer of citizens of the occupying Power into the occupied territory, in contravention of international humanitarian law and international criminal law, and leading to a number of adverse human rights impacts for Palestinians.

While the analysis applied to both these case studies is intended to offer a preliminary assessment of the legal plausibility of the cases, there is sufficient ground to conclude that financial institutions and real estate agents may be held accountable for their involvement with settlements in occupied Palestine.

Water and Sanitation
In this report I also reiterate my concerns regarding water and sanitation in the context of Israel’s near exclusive control over all underground and surface water resources in Palestine. In Gaza, already many families, struggling at subsistence levels or below, are forced to purchase clean water from external sources. The Israeli blockade and the lack of water and sanitation infrastructure, which has been repeatedly destroyed in the course of Israeli military operations, are factors which exacerbate the water scarcity.

In the West Bank, one estimate is that the restrictions on access to water for Palestinians, has led to a situation where around 500,000 Israeli settlers enjoy six times the amount of water
used by 2.6 million Palestinians. The ability of the Palestinians to improve the existing water and sanitation infrastructure is controlled by the Joint Water Committee, in which Israel has the power to veto any proposal for water and sanitation projects. Despite the obvious critical need for the development of this infrastructure, the Committee’s past record of approvals for wells and wastewater facilities suggests that their decisions are deeply skewed in favour of settlements and deprive Palestinians of their fair share of water and right to develop this infrastructure.

I would like to stress the importance of the support by the international community to, not only assist with meeting immediate water and sanitation needs, but also to put pressure on Israel to end discriminatory policies and practices that induce a water and sanitation crisis in occupied Palestine.

**Recommendations**

- If current diplomacy fails to produce a solution to the conflict, that the General Assembly request an Advisory Opinion from the International Court of Justice as to the legal consequences of the prolonged occupation of Palestine.
- That Israel ceases the creation and expansion of settlements, return Israeli settlers to the Israeli side of the Green Line and provide reparations to Palestinians who have suffered damage from settlement related activities since 1967.
- That Israel informs its national franchises and subsidiaries of global companies of their corporate responsibilities and potential liability in overseas domestic courts for corporate complicity in violations of international law.
- That all companies with relations to settlements comparable to those used as case studies in the present report, review their arrangements to ensure respect for international law and the Guiding Principles on Business and Human Rights
- That Belgium and France compensate Palestinians who have been negatively affected by Dexia Israel’s involvement with settlements.
- That Israel immediately ends its unlawful discriminatory policies and practices which deny Palestinians their rightful share of water resources in the West Bank and the Gaza Strip.