**The UN Human Rights Council “database” of business enterprises**

On 24 March 2016, at its 31st session, the Human Rights Council (HRC) adopted resolution 31/36 entitled “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan”.[[1]](#footnote-1) Paragraph 17 (OP 17) of this resolution requests the United Nations High Commissioner for Human Rights (OHCHR) produce a database of all business enterprises engaged in certain Israeli settlement activity in the occupied Palestinian territory, or the "Blacklist".

While local and international business activity in disputed or occupied territories is widespread, and involves some of the world’s largest companies, Resolution 31/36 represents the only known UN effort to produce a “database” of such activity in respect of one situation. The fact that such business activity is so ubiquitous and rarely criticized demonstrates that it is not viewed as raising legal or human rights issues, while the desire to establish a database only with respect to business activity in Israeli settlement communities points to the political bias of the body that initiated this process.

OP17 was adopted despite the strong opposition of the US, EU and Israel. It is the product of a specific discriminatory HRC agenda item, the organization's only country-specific agenda item, which reflects ongoing and well documented institutional bias against Israel in the HRC. The Council is widely criticized as a deeply politicized body, whose agenda is often dictated by the world’s worst human rights violators, and whose legitimacy and credibility in the human rights arena has been fundamentally undermined as a result.

Israel, together with the United States and numerous other leading States, have expressed, consistent opposition to the database and its publication, and have conveyed this position in their public and private communications. Israel has no intention of cooperating with this illegitimate exercise for the following reasons:

* + - * **Lack of authority to produce database:** The production of a “database” exceeds the mandate of the OHCHR, which has neither the competence nor the capacity to engage in this action. The responsibility for ensuring compliance of business enterprises with relevant laws, or for promoting any relevant non-binding guidelines with respect to business practices, rests exclusively with the States in which the relevant enterprises are domiciled or operating.
      * **Lack of authority to communicate to companies:** The HRC and OHCHR are bodies mandated to deal with State conduct in the human rights field and they have no legal or other authority over business enterprises.
      * **Lawfulness of business activity:** Business activity in areas of Judea and Samaria (West Bank) under Israeli jurisdiction in accordance with existing Israeli-Palestinian agreements, is entirely lawful. Indeed, the notion that business enterprises are even subject to international law, international humanitarian law, and international human rights law is highly questionable and has been rejected by Courts in leading national jurisdictions.
      * **Blacklist:** The creation of a database, and certainly its publication in any form, amounts to an effort to produce a blacklist of companies that are not engaged in any wrongdoing, and with the potential of causing commercial, reputational and legal harm. By engaging in this action, the OHCHR is allowing itself to become an instrument of those engaged in an illegitimate, discriminatory and political motivated agenda.

Furthermore, the methodology of the OHCHR is entirely devoid of transparency, and the information upon which it has based its communication has been drawn from partial, unverifiable and unknown sources, including politically-motivated actors, who responded voluntarily to the OHCHR’s calls. The OHCHR also lacks the requisite competence or capacity to verify independently the information it has received. While Resolution 31/36 requires a database of “all” business enterprises, the process adopted makes the database flawed from its inception and inevitably renders the list the partial, selective and discriminatory in nature

It is important to note that the database initiative is not legal or quasi-legal in nature, and does not, in and of itself, carry with it legal consequences. The process lacks due process and procedural safeguards to ensure that the list will not contain unauthoritative or inappropriately verified information. Furthermore, cooperation by companies with the database initiativemay entail potential legal consequences, liability, financial risk and reputational harm. As is known, relevant domestic legislation and anticipated legislative proposals in various jurisdictions prohibit companies from discriminating in their business practices, including laws that specifically pertain to discriminatory practices with respect to Israel or territory subject to Israeli jurisdiction. This pertains, for example, to companies that are domiciled in the US, are subsidiaries of US-domiciled companies, or that do business in the US. In this context, dozens of U.S. State laws currently bar granting contracts to, or pension-fund investment in, companies that boycott Israel or territories under its jurisdiction. Moreover, such cooperation might raise issues under existing relevant US federal legislation.

The potential legal consequences, liability, financial risk and reputational harm is not merely a theoretical possibility, as the Airbnb case which unfolded from late 2018 to April 2019 exemplified. In this case Airbnb announced its intention to delist an estimated 200 listings of Israeli properties in Judea and Samaria. The company announced in April 2019 that his policy will not be implemented as part of settlement reached with all lawsuits that were brought by hosts and potential hosts and guests who objected to the policy on grounds of discrimination. This policy was not only attacked in the courts as it landed Airbnb on the top ten antisemitic events of 2018 by the Wiesenthal Center, led to US State investment boards to add the company to their blacklists as well as a host of leading political figures, including State Governors and American Vice President Mike Pence. All this not only led the company to abandon its policy, it also led to the company stating that "Airbnb has always opposed the BDS movement"[[2]](#footnote-2). This case exemplifies the risk the potential risk stated above.

1. <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Pages/DatabaseHRC3136.aspx> [↑](#footnote-ref-1)
2. <https://news.airbnb.com/update-listings-disputed-regions/> [↑](#footnote-ref-2)