

Mandate of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Corporations, International Law and the Converging Legacies of Colonialism in Occupied Palestinian Territory

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Submitted by:

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Dear Special Rapporteur Fabian Salvioi,

I write to you in response to the questionnaire on transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts. I am a doctoral student at the Irish Centre for Human Rights at the National University of Ireland in Galway focusing on the role of corporations in the continuing colonization of Palestine and the Business and Human Rights Coordinator with the Palestinian human rights organization, Al-Haq, Law in the Service of Man in Ramallah, Palestine.

Despite the apparent limitations in the framing of the questionnaire to past colonial practices in post-colonial contexts, I would like to direct my response to the first question posed:

*Question 1: Please indicate which mechanisms have been established in the concerned country to **hold accountable** persons accused of committing or bearing responsibility for gross violations of human rights and serious violations of international humanitarian law in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in investigating, prosecuting and sanctioning such crimes.*

Considering the role of transnational corporations and other business enterprises in the practice of colonialism and its contemporary manifestation within occupied Palestinian territory, this response will focus specifically on the continuing challenges encountered in the attempt to adopt an international legally binding instrument to regulate the activities of such actors. The limited nature of this submission will only scratch the surface on an issue, which I hope will open the door to more in depth engagement in the future.

Although the intertwined genealogies of colonialism, commerce and international law have been revived of late to provide a historical framing for the emerging discourse in the field of business and human rights, the Question of Palestine and the movement to tame corporate activity, provide a unique example of how these areas converge as legacies of colonialism in the Palestinian present.

One such legacy of European colonial expansion is the fragmentation of the concept of sovereignty, where the control of, and responsibilities towards, property and people was increasingly divided between states and corporations. As international law has developed in relation to states and their status as the primary subjects of international law in conjunction with the refinement of the art of colonization, state and private actors have thrived within the gaps and ambiguity that has been created.

Israel as an occupying power has continued to exploit these gaps, whether they be in law or in practice and enforcement, to develop what can be considered ‘a best business practices of colonialism’. By incorporating globalization and the free market economy into its colonial enterprise within occupied territory, Israel has created an economic incentive structure, which continues to perpetuate the conflict. In making the continuing colonization of Palestine not only beneficial to its own economy but also profitable to multinational business enterprises and coupling state policy with foreign direct investment, Israel has invited both state and multinational corporate actors to benefit from its contemporary colonial enterprise.

The insulation from accountability for corporate actors is yet another legacy of colonialism that we see manifested in the lack of an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises. Despite the clear historical and continuing role of corporations in conflicts and their impact on human rights and the exploitation of natural resources; the goal to create clear international legal obligations on commercial actors remains elusive, nearly fifty years after the famed speech of Salvador Allende before the UN General Assembly. Even within the context of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, the incorporation of international humanitarian law and conflict-affected areas has met its own separate challenges.

As the legacies of colonialism converge on Palestine, it is important to remember that the injustices within the Palestinian context are just a microcosm of global injustices where different means and methods of colonialism have been used and refined over time. As 2021-2030 marks the Fourth International Decade for the Eradication of Colonialism, it is also worth noting that Israel, along with the United Kingdom and the United States of America, are the only three states to formally vote against the initiative. The transition to justice from colonialism must first ensure an eradication of colonialism of the past and clearly prohibit the practice in the future. Between these two ends of the colonial spectrum, the colonization of Palestine continues to thrive.

If this mandate is going to be successful, it must address the various dimensions of the international political economy including corporate actors, their activities and impact on international law to secure truth, justice, reparation and guarantees of non-recurrence. Support of the ongoing process to adopt a legally binding instrument to regulate the activities of transnational corporations and other business enterprises is just one example of potential engagement for the mandate in the future.

For your reference, I am also attaching an archival document not found in the public domain, titled “The Colonisation of Palestine, Means and Methods” by David Levontin from 1925.

I remain at your disposal to elaborate on these brief reflections, and thank you, in advance, for acknowledging receipt of my submission.

Sincerely,

Wesam Ahmad