

Présentation devant le Conseil de sécurité

Introduction

First I would like to thank Malaysia and the co-chairs of the meeting, for inviting me to make this presentation. It is a great privilege and honour to appear before the Security Council.

As a lawyer in international law, I have made numerous lectures and presentations on the colonization of OPT and its legal implications. It confers sometimes a feeling of repetition and discouragement. It is an emblematic case of the huge gap that can exist between international law in theory and its effective implementation. Nevertheless, I will try to make some reflections that could give some ideas of what practical measures should and could be adopted, and the legal reasoning that supports the adoption of such measures.

Of course, there is nothing new to say on the illegality of Israeli settlement in Palestinian territory occupied. As you know, the settlement was declared contrary to the 4th CG by numerous resolutions of this Council, by the UN GA, by ICJ in its 2004 opinion and by all States, to the exception of the State of Israel. Colonization is also contrary to the right to self-determination of the Palestinian people, in that it constitutes an obstacle to an effective Palestinian State.

The Israeli settlements are also the source of many other violations of IL, particularly IHL and HR, as recalled by other speakers, and as many UN and NGO reports set. It is the policy of settlement that leads to the construction of the wall, the destruction of Palestinian homes, the confiscation of land, appropriation of natural resources, establishment of checkpoints, discriminatory measures, for instance bypass roads reserved for the settlers only. And ultimately, it is colonization that justifies, the indefinite continuation of the Israeli occupation, including the annexation of East Jerusalem.

In regard to this prolonged illegal situation, it is essential to determine what are the responsibilities of the United Nations (especially the Council) and other States, and what are the legal means available to induce Israel to halt its settlement policy.

I will deal with this issues during the few minutes of my presentation.

First, I will examine the duties of the States, and then, the responsibility of the United Nations. These duties and responsibility are only the logical consequences of several obligations under IL, as I will show.

1. The duties fo the States.

The settlement activity creates an illegal situation in violation of peremptory norms of international law. In such a case, Sates have specific obligations under international law:

Responsibility of States for Internationally Wrongful Acts, Article 41 :

1. States shall cooperate to bring to an end through lawful means any serious breach of international law (within the meaning of article 40).
2. No State shall recognize as lawful a situation created by a serious breach of IL, nor render aid or assistance in maintaining that situation.

Moreover, Common Article 1 of the Geneva Conventions sets an obligation for the States to to "ensure respect" for IHL, in particular the prohibition of the settlements.

All these obligations have been explicitly confirmed by the ICJ in its advisory opinion in the Wall case.

Therefore, States should take effective measures to enforce the prohibition of colonization and to ensure that they don't, in any way, render any form of aid or assistance to the settlement activity. That supposes not only passive conduct, but also adoption of positive measures. The question arises particularly in the economic field. The close connection between the illegal Israeli settlements in the West bank, the economic activities in or by these settlements, and the violation of the rights of the Palestinian population, has been recognised by several resolutions of the Human Rights Council of the UN. For instance, in its latest resolution adopted in March 2016, the Council has declared himself:

« Concerned that economic activities facilitate the expansion and entrenchment of settlements, and aware that the conditions of harvesting and production for products made in settlements involve the breach of applicable legal norms, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem, and calling upon all States to respect their legal obligations in this regard ».

Various measures should be adopted by States to comply with their obligations not to render assistance and to ensure respect:

- prohibition of the import of products originating in settlements;
- halt of all funding to entities established in the settlements;
- adoption of efficient measures against companies engaged in economic activities related to settlements (in reference to "Business on the guiding principles and human rights" adopted by the UN in 2011).

These measures would only be the logical consequences of the States obligations under international law. If the production of goods in the settlements allow their expansion and implies violations of the rights of the Palestinian population, then the logical legal consequences would be the ban of the import of such goods and the prohibition for the national companies to do business with or in the settlements. **

Some States or organisations, like the European Union, has taken some minimal measures against the settlement, like the so-called “Guidelines principles” adopted by the EU in 2013, but it remains largely insufficient, considering the gravity and the urgency of the situation.

To be truly effective, the measures against targeting the settlements , should be adopted, or at least recommended, collectively within the UN. Second point. This leads to the second point.

2. The United Nations

In its advisory opinion, the ICJ stated that “the Court is of the view that the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present Advisory Opinion”.

The Court also emphasized « the urgent necessity for the United Nations as a whole to redouble its efforts to bring the Israeli-Palestinian conflict, which continues to pose a threat to international peace and security, to a speedy conclusion, thereby establishing a just and lasting peace in the region ».

More than 10 years after the delivery of the opinion of the Court, and nearly 50 years after the beginning of the occupation and colonization of Palestinian territory, we must acknowledge the failure of the United Nations to ensure respect for international law by Israel, despite the adoption of numerous resolutions by various organs.

If a chance of peace in the Middle East will be preserved, it is about time to go beyond mere declaratory policy and adopt more effective measures to achieve a halt to settlements and end the occupation. In this perspective, it is possible to make a reference to what was the situation of the struggle against the apartheid regime in South Africa, back in the 70's. Apartheid was a systematic and prolonged violation of fundamental norms of international law, condemned universally. But due to certain political alliances, for a long time, no binding measures have been adopted by the Security Council. With pressure from certain groups of states in the General Assembly and civil society, the Security Council finally decided in 1977 an arms embargo in 1985 and the Council has «urged» Members States to adopt measures against South Africa. Today we should be able to learn from this precedent and start a process leading to the adoption by the General Assembly of a resolution recommending specific measures against the settlement activity. It could be started with the measures that I have indicated a few minutes ago, which would have the best chance to obtain some consensus, as they are merely the implementation of international obligations.

Conclusions

Being a lawyer of international law working on the issue of the Israeli-Palestinian conflict is sometimes a depressing job. On one hand, all the rules are clearly stated by the United Nations. On the other, those rules are absolutely not respected, and no serious action is taken to make them more effective. But if there is still hope for the Palestinian people to have a state and freedom, it is because it has international law on its side. Now we need the United Nations and Member States to fulfil their responsibility and make effective the rights of the Palestinian people.

(Here, I would like to refer to the judgment delivered by the Tribunal of the EU, in the Western Sahara Case, on the 10 december 2015. The Tribunal has annuled a trade agreement

between the EU and Morocco, allowing the exports of goods from the territory of Western Sahara. The Tribunal said (I quote) : “If the EU allows the export to its Member States of products originating from this other country that have been made or obtained in conditions that do not respect fundamental rights of the population of the territory from where they originate, it risks indirectly encouraging these violations or benefitting from them”.)