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Report

Legal Reflections on Town Twinning with Israeli Colonial Settlements

*Basheer Alzoughbi**

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Al Jazeera Centre for Studies
Tel: +974 40158384
jcforstudies@aljazeera.net
http://studies.aljazeera.net

The establishment of Israeli colonial settlements has been an Israeli state-adopted policy since 1967 aiming to deprive the Palestinian people of the right of self-determination and building on or using their property with the ultimate goal of impeding territorial contiguity [Al Jazeera]

Introduction

The establishment of Israeli colonial settlements in the occupied territory of the de jure State of Palestine and the transfer of Israeli civilians thereto has been an Israeli state-adopted policy since 1967 aiming to deprive the Palestinian people of the right of self-determination and building on or using their property with the ultimate goal of impeding territorial contiguity. The Israeli colonisation trend did not exclude the involvement of other non-governmental or semi-governmental actors including the Settlement Department of the World Zionist Organization and Israeli individuals or private groups such as the Gush Emunim movement. Similar to Israel's colonisation trend was one of the Germanisation methods carried out during the Second World War by Nazi Germany: introducing colonists in certain occupied territories e.g. in Poland and the former Union of Soviet Socialist Republics.

The sixth paragraph of Article 49 of the Fourth Geneva Convention explicitly prohibits the occupying power from transferring parts of its civilian population into an occupied territory.(1) The commentary on the Fourth Geneva Convention provides that "It is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory…to colonize those territories."(2) The violation of the sixth paragraph of Article 49 of the Fourth Geneva Convention is but one of the grave breaches explicitly mentioned in Additional Protocol I of 1977 which amounts to a war crime.(3) The responsibility of the Israeli state for its actions and omissions for the internationally wrongful conduct of establishing colonial settlements in an occupied territory and transferring civilians thereto does not preclude the responsibility of other states, which have rendered aid or assistance to the conduct in question.

The act of town twinning with colonial settlements is but an example of rendering aid or assistance to the unlawful transfer of Israeli civilians to colonial settlements in an occupied territory. Very few foreign municipalities have twined with colonial settlements in the occupied territory of the de jure State of Palestine. Yet, it is considered a recent serious phenomenon under contemporary international law that invokes state responsibility. This paper aims to address the issue of town twinning with colonial settlements as an act of aid or assistance to the internationally wrongful act of constructing civilian colonial settlements and transferring Israeli civilians thereto.

The Conduct of Town Twinning and State Responsibility

Several mayors representing their municipalities or city halls have been conducting an internationally wrongful act of town twinning with Israeli colonial settlements. For example, Mobile, Alabama, United States; Ceadîr-Lunga, Moldova and Heredia, Costa Rica have twinned with Ariel, which is located in the central West Bank. Another example is the city of Williamsport, Pennsylvania which has twinned with Ma'ale Adumim strategically located in the vicinity of Jerusalem. Ariel, Ma'ale Adumim, Beitar Illit and Modi'in Illit are four colonial settlements established in the occupied territory of the de jure State of Palestine which have been granted the status of municipality under Israeli domestic law due to their large populations. The other settlements in the occupied territories that do not have the status of municipality per se under Israeli domestic law are either grouped into regional councils, have the status of local council or are within the jurisdiction of the Jerusalem municipality.(4)

Since the Jerusalem municipality includes an annexed and occupied section of Jerusalem that encompasses a significant number of settlers in large colonial settlements, foreign municipalities are under a legal obligation not to twin or cooperate with the de facto municipality of Jerusalem. UN Security Council Resolution 252 of 21 May 1968 that "Considers that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem, are invalid and cannot change that status."(5) New York City, New York, United States and Ayabe, Japan have twinned with the Jerusalem municipality. Prague has also "active contact" with it but "without an official agreement".(6)

The relevant municipalities' conduct of town twinning with Israeli colonial settlements satisfies the elements of an internationally wrongful state act. The elements of such consist of an action and/or omission attributable to a state under international law and which must amount to a violation of an international obligation.(7) In the case concerning United States diplomatic and consular staff in Tehran, the International Court of Justice (ICJ) provided that "First, it must determine how far, legally, the acts in question may be regarded as imputable to the Iranian State. Secondly, it must consider

their compatibility or incompatibility with the obligations of Iran under treaties in force or under any other rules of international law..."(8)

The various municipalities' internationally wrongful acts of town twinning are attributable to the responsibility of the aforementioned states on the basis that these bodies, which are exercising public functions, are organs of the state which are not acting in conformity with its international obligations. Article 4 of the International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts asserts on that "the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State…"(9) During the 1930 Hague Conference, all participating states affirmed the responsibility of the state for "[a]cts or omissions of bodies exercising public functions of a legislative or executive character (communes, provinces, etc.)."(10)

The commentaries in the Draft Articles on Responsibility of States for Internationally Wrongful Acts mentions that "Mixed commissions after the Second World War often had to consider the conduct of minor organs of the State, such as…mayors and police officers, and consistently treated the acts of such persons as attributable to the State."(11) In the LaGrand case, the ICJ held the United States responsible for the acts of the State of Arizona represented by its governor. The ICJ concluded that "...by failing to take all measures at its disposal to ensure that Walter LaGrand was not executed pending the final decision of the International Court of Justice in the case, the United States of America breached the obligation incumbent upon it…"(12) The transfer of Israeli civilians into colonial settlements built in the occupied territory of the de jure State of Palestine requires states to bring an end to this internationally wrongful act and neither recognise the situation as lawful nor render any kind of aid or assistance. This is reflected under Article 41 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, which provides that "1. States shall cooperate to bring to an end through lawful means any serious breach…2. No State shall recognize as lawful a situation created by a serious breach…nor render aid or assistance in maintaining that situation."(13) By town twinning with Israeli settlements, the relevant municipalities are explicitly or implicitly recognising as lawful the situation of the settlers, which is a serious violation of international humanitarian law, a war crime under international criminal law and triggers state responsibility. Providing aid or assistance to the construction of civilian settlements in an occupied territory and transferring parts of the occupant's civilian population thereto runs contrary to the obligation of states to ensure respect to international humanitarian law and further violates United Nations relevant resolutions.

United Nations Resolutions

The United Nations Security Council and General Assembly have issued several resolutions calling upon states not to render any aid or assistance in relation to Israel's colonial settlements. Under Resolution 465 of 1980, the Security Council "[c]alls upon all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories…"(14) Security Council Resolution 471 of the same year reiterated the obligation of all states not to assist Israeli settlements: "…Calls once again upon all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories".(15)

The Security Council has issued other resolutions in other situations in which it called upon all states to refrain from providing any assistance to the colonisation of territories. For example, Security Council resolution 218 of 1965 "[r]equests all States to refrain forthwith from offering the Portuguese Government any assistance which would enable it to continue its repression of the people of the Territories under its administration…"(16) In the Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), the ICJ provided in its judgment that all states have the obligations to carry out the Security Council's resolutions irrespective of whether they agree with them or not:

Thus when the Security Council adopts a decision under Article 25 in accordance with the Charter, it is for [its] member States to comply with that decision, including those members of the Security Council which voted against it and those Members of the United Nations who are not members of the Council. To hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter.(17)

The General Assembly has also called upon all states not to render any aid to Israel in its colonisation policies. For example, General Assembly Resolution 31/106 of 1976 "[r]eiterates its call upon all States…not to recognize any changes carried out by Israel in the occupied territories and to avoid actions, including those in the field of aid, which might be used by Israel in its pursuit of the policies of annexation and colonization…"(18) General Assembly resolution ES-7/4 of 1982 urged governments "[t]o renounce the policy of providing Israel with military, economic and political assistance, thus discouraging Israel from continuing its aggression, occupation and disregard of its obligations under the Charter and the relevant resolutions of the United Nations…"(19)

The General Assembly could and should issue a resolution to explicitly deplore the conduct of the various municipalities of town twinning with Israeli colonial settlements and should further call upon the states of these municipalities to cease and resituate such acts. It must also be remembered that in the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory advisory opinion, the ICJ reminded states of their "…obligation not to render aid or assistance in maintaining the

situation created by such construction."(20) The wall and its associated regime was built to assert the annexation of the already annexed colonial settlements and property, e.g. the annexed section of Jerusalem, and further annex new colonial settlements and property located in the territory of the de jure State of Palestine which encompasses the majority of the settlers population.

Invocation of Responsibility

In its capacity as the injured state, the de jure State of Palestine is under the obligation to raise the issue of town twinning by sending legal memos to the concerned states. The memos should include the illegal character of the conduct of town twinning with Israeli settlements under international law, the relevant resolutions of the United Nations Security Council and General Assembly, the character and nature of being an aid or assistance, the implicit or explicit implications of such conduct on the recognition of colonial settlements and the legality of the transfer of Israeli civilians.

The de jure State of Palestine must further call upon those states whose municipalities have conduced town twinning with colonial settlements to offer adequate reparation including restitution and satisfaction. The Permanent Court of International Justice (PCIJ) furnished in the case concerning the factory at Chorzów that, "It is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form."(21) In the Rainbow Warrior Affair, the Arbitral Tribunal provided that "[s]ince in the international law field there is no distinction between contractual and tortious responsibility, so that any violation by a State of any obligation, of whatever origin, gives rise to State responsibility and consequently, to the duty of reparation".(22)

Conclusion

The conduct of town twinning with Israeli colonial settlements is a serious issue under contemporary international law that has been practised by several municipalities. The internationally wrongful act of the municipalities is attributable to the responsibility of inter alia the aforementioned states since (i) these public bodies are considered organs of the state and (ii) are acting in breach of international obligations which informs that states must not render any aid or assistance in relation to the Israeli colonial settlements. Town twinning with colonial settlements also gives rise to an implicit or explicit recognition of Israeli occupation as lawful, which is prohibited under international humanitarian law, considered a war crime under individual criminal responsibility and invokes state responsibility. States must ensure respect to international humanitarian law by bringing an end to the violations and not encourage them.

The de jure State of Palestine must request those responsible states for town twinning with Israeli settlements to cease the internationally wrongful acts and further provide

adequate reparation including restitution and satisfaction. The General Assembly could and should issue a resolution to explicitly deplore the conduct of the town twinning with Israeli colonial settlements as being an example of aid or assistance in defiance of former UN resolutions including Security Council Resolutions 465 and 471 and General Assembly Resolution 31/106.

***Basheer Alzoughbi** is an Academic specializing in public international law

References

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(2) Jean S. Pictet, ed., The Geneva Conventions of 12 August 1949: Commentary IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War Geneva: International Committee of the Red Cross, 1958, p.283.

(3) Article 85 (5), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Article 85 (5) reads as follows: 'Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.'

(4) This without prejudice to the existence of so called settlement outposts in the occupied territory of Palestine. For more information: see AlZoughbi Basheer, Settlements or Colonies: Misleading Statistics in the Occupied Territory of the de jure State of Palestine, Arab Center for Research and Policy Studies, 2013,p.9.

(5) S/RES/252 (1968) 21 May 1968.

(6) Partner Cities, Active contacts without an official agreement Available at URL: http://www.praha.eu/jnp/en/about_prague/city_hall/foreign_activities/partner_cities/index.html

(7) Art.2, Draft Articles on Responsibility of States for Internationally Wrongful Acts, Text adopted by the International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/56/10). The report, which also contains commentaries on the draft articles, appears in the Yearbook of the International Law Commission, 2001, vol. II, Part Two, as corrected. 2008 p. 76.

(8) Para 56, United States Diplomatic and Consular Staff in Tehran, Judgment, I. C. J. Reports 1980, p.3.

(9) Article 4, Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001).

(10) League of Nations, Conference for the Codification of International Law, Bases of discussion for the Conference drawn up by the Preparatory Committee, Vol. III: Responsibility of States for Damage caused in their Territory to the Person or Property of Foreigners (Doc.C.75.M.69.1929.V.), p.90; Supplement to Vol. III: Replies made by the Governments to the Schedule of Points: Replies of Canada and the United states of America (Doc.C.75(a).M69(a).1929.V.), pp. 3, 18.

(11) See, e.g., the Currie case, UNRIAA, vol. XIV (Sales No. 65.V.4), p. 21, at p. 24 (1954); Dispute concerning the interpretation of article 79…, at pp. 431–432; and Mossé case, UNRIAA, vol. XIII (Sales No. 64.V.3), p. 486, at pp. 492–493 (1953). For earlier decisions, see the Roper case, ibid., vol. IV (Sales No. 1951. V.1), p. 145 (1927); Massey, ibid., p. 155 (1927); Way, ibid., p. 391, at p. 400 (1928); and Baldwin, ibid., vol. VI (Sales No. 1955.V.3), p. 328 (1933)… quoted in Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries 2001, p 41.

(12) Para 128 (5), LaGrand (Germany v. United States of America), Judgment, I. C. J. Reports 2001, p. 516.

(13) Art. 41, Draft Articles on State Responsibility for the Internationally Wrongful Acts (2001).

(14) S/RES/465, 1 March 1980.

(15) S/RES/471, 5 June 1980.

(16) Security Council Resolution 218 of 23 November 1965.

(17) Para. 116, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J Reports 1971 p.57.

(18) United Nations General Assembly Resolution 31/106 December 16, 1976.

(19) General Assembly A/RES/ES-7/4 28 April 1982.

(20) Para 159, Legal Consequences of the Construction of a Wal1 in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136.

(21) Factory at Chorzow (Germ. v. Pol.), 1927 P.C.I.J. (ser. A) No. 9 (July 26).

(22) Para 75, Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements, concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair 30 April 1990 VOLUME XX p.251.