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UNITED NATIONS HUMAN RIGHTS SPECIAL PROCEDURES
SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

15 August 2019

The Honourable Ginette Petitpas Taylor
Minister of Health

The Honourable James Carr T
Minister of International Trade Diversification

The Honourable David Lametti
Minister of Justice and Attorney-General

Re: *Kattenburg v. Canada (Attorney General)* – Israeli settlement products – Canada Israel Free Trade Agreement

Dear Ministers Petitpas Taylor, Carr and Lametti:

We write with an urgent request that the Canadian government not appeal the recent, important Federal Court decision – in *Kattenburg v. Canada (Attorney General)*[1] – that goods imported into Canada from the Israeli settlements in the West Bank and East Jerusalem must not be identified as "Products of Israel." The ruling provides important human rights safeguards which we call on the government to accept and respect.

In its decision, the Court held that: "Canadian federal legislation requires food products (including wines) that are sold in Canada bear truthful, non-deceptive and non-misleading country of origin labels." (para. 127). The ruling went on to state that the labels on wines produced in the West Bank settlements stating that they are 'Products of Israel' are: "…false, misleading and deceptive." (para. 128).

This ruling is just and proper. It correctly accepts the political and legal fact that the West Bank is not part of Israel, and that Israel cannot claim that goods produced in its settlements come from 'Israel.'

Accordingly, we urge the Government of Canada to take two necessary steps:

i. To accept the ruling of the Federal Court, and to abandon any plans to appeal it to the Federal Court of Appeal; and

ii. To review and remove the provisions in the Canada Israel Free Trade Agreement which permit the admission of goods and services from Israeli settlements, industrial parks and other illegal enterprises in occupied East Jerusalem and the West Bank to enter Canada.

[1] 2019 FC 1003.

It is widely accepted that the Israeli settlements are a serious source of human rights violations against the five million Palestinians under occupation. As Amnesty International has stated in 2017:

> *While the Palestinian economy has been stunted by 50 years of abusive policies, a thriving multimillion-dollar settlement enterprise has been built out of the systematic oppression of the Palestinian population.*
>
> *Hundreds of millions of dollars' worth of goods produced in Israeli settlements built on occupied Palestinian land are exported internationally each year, despite the fact that the vast majority of states have officially condemned the settlements as illegal under international law. Over the years, Israeli and international businesses have also enabled and facilitated settlement construction and expansion.*
>
> *Israel's policy of settling Israeli civilians on occupied Palestinian land has led to a myriad of human rights violations. Tens of thousands of Palestinian homes and properties have been demolished by Israel and hundreds of thousands of Palestinians have been forcibly displaced; many families were pushed out of their homes or land to clear areas for settlement construction. At least 100,000 hectares of Palestinian land have been appropriated for exclusive settlement use.*
>
> *Israel has also unlawfully seized control of Palestinian natural resources, such as water, fertile land, stone quarries and minerals, and diverted these to benefit settlement industries to produce agricultural products, construction materials and manufactured goods that are often exported abroad. At the same time, Israel has imposed arbitrary restrictions depriving Palestinians of access to and use of their own water, land and other resources, restricting their economic development and violating their economic and social rights.*[2]

Both international law and Canadian law, as well as stated Canadian foreign policy, requires that the two steps we have proposed should and must be implemented. The Canadian government has often stated that it is a strong believer in an rules-based international order. Fulfilling both of these steps would enable Canada to fulfill its legal obligation to support the use of international law and human rights principles to resolve conflicts and protect the vulnerable and the afflicted.

1. <u>International Law</u>

International law is very clear that the Israeli settlements are illegal, and that the international community has a solemn obligation not to offer any assistance to them.

- United Nations Security Council Resolution 2334 (23 December 2016) stated that the Israeli settlements in East Jerusalem and the West Bank were a "flagrant violation under international law" and called upon all States "to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967."

- United Nations Security Council Resolution 465 (1 March 1980) affirmed the application of the *Fourth Geneva Convention* to the occupied Palestinian territory, held that the Israeli settlements are a "flagrant violation" of the *Convention*, and called upon "all States not to

[2] Amnesty International (7 June 2017), accessed at <https://www.amnesty.ca/news/states-must-ban-israeli-settlement-products-help-end-half-century-violations-against>

provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories."

This position has been affirmed by the International Court of Justice,[3] the United Nations General Assembly,[4] the UN High Commissioner for Human Rights,[5] the European Union,[6] Amnesty International,[7] the International Committee of the Red Cross,[8] the High Contracting Parties to the Fourth Geneva Convention,[9] Human Rights Watch[10] and B'Tselem.[11]

The Israeli settlements are widely accepted to be a violation of the *Fourth Geneva Convention* (Article 49, para. 6) and a grave breach under the 1977 *Additional Protocol 1* to the *Convention* (Article 85(4)). They are also a presumptive war crime under the 1998 *Rome Statute* (Article 8(2)(b)(viii) of the Appendix on War Crimes).

2. Canadian Law

The Israeli settlements are in violation of the *Geneva Conventions Act*, R.S.C. 1985, c. G-3 (Schedule IV, Article 49, para.6), which reads:

> *The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.*

Under Schedule V, Article 85(4)(a) of the *Geneva Conventions Act*, the Israeli settlements would be deemed to be a "grave breach" of the *Act*:

> *the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol:*
>
> > ***(a)*** *the transfer by the occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the* Fourth Convention*;*

Under the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24, at Schedule 2(1), Article 8(2)(b)(viii), the Israeli settlements would be a presumptive war crime:

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[3] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion* (2004), 43 ILM 1009. The UN General Assembly endorsed the *Advisory Opinion* on 20 July 2004 by a vote of 150-6-10.
[4] A/Res/71/97 (December 2016).
[5] A/HRC/40/42 (30 January 2019).
[6] Council of the EU, *Council Conclusions on the Middle East Peace Process* (18 January 2016).
[7] Amnesty International, Israeli Settlements and International Law, accessed at < https://www.amnesty.org/en/latest/campaigns/2019/01/chapter-3-israeli-settlements-and-international-law/>
[8] [8] J.M. Henckaerts & L. Doswald-Beck (eds.), *Customary International Humanitarian Law* (Geneva: I.C.R.C. 2005), at pps. 457-463.
[9] Conference of High Contracting Parties to the Fourth Geneva Convention, 17 December 2014, accessed at < https://unispal.un.org/UNISPAL.NSF/0/E7B8432A312475D385257DB100568AE8>
[10] Human Rights Watch, *World Report 2019: Israel and Palestine, Events of 2018*, accessed at < https://www.hrw.org /world-report/2019/country-chapters/israel/palestine>
[11] B'Tselem, Settlements, accessed at < https://www.btselem.org/topic/settlements>

the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

Under the *Geneva Conventions Act* (Common Article 1), Canada has a legal obligation to "respect and ensure respect" for all of the provisions of the Conventions:

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

3. Canadian Foreign Policy

Canada's stated policy towards the Israeli-Palestinian conflict includes the recognition that the *Fourth Geneva Convention* applies to the occupied Palestinian territory, the Israeli settlements are a violation of the *Convention*, and includes a specific mention of United Nations Security Council Resolution 465, which calls upon all states not to provide any assistance to the Israeli settlements:

Canada does not recognize permanent Israeli control over territories occupied in 1967 (the Golan Heights, the West Bank, East Jerusalem and the Gaza Strip). The Fourth Geneva Convention *applies in the occupied territories and establishes Israel's obligations as an occupying power, in particular with respect to the humane treatment of the inhabitants of the occupied territories. As referred to in UN Security Council Resolutions 446 and 465, Israeli settlements in the occupied territories are a violation of the* Fourth Geneva Convention. *The settlements also constitute a serious obstacle to achieving a comprehensive, just and lasting peace.*

Canada believes that both Israel and the Palestinian Authority must fully respect international human rights and humanitarian law which is key to ensuring the protection of civilians, and can contribute to the creation of a climate conducive to achieving a just, lasting and comprehensive peace settlement.

Conclusion

Ministers, we call upon you collectively to ensure that the federal government accepts and complies with its binding obligations under international law and Canadian law by taking all necessary steps to halt the financial support and assistance provided to the illegal Israeli settlements by prohibiting all settlement goods and services from entering the Canadian market.

- As a first step, this means accepting the ruling of the Federal Court in *Kattenburg*.

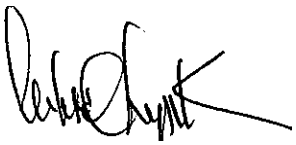
- As a second step, this means reviewing and revising the CIFTA within a reasonable time period in order to ensure that Israeli settlement goods and services, whether in whole or in part, are not permitted entry into Canada.

We would welcome the opportunity to met with you at your early convenience to discuss our concerns and recommendations.

Sincerely,

Alex Neve
Secretary General
Amnesty International Canada
(English Branch)

France-Isabelle Langlois
Directrice Générale
Amnistie internationale
Canada francophone



Michael Lynk
United Nations Special Rapporteur
for the situation of human rights in the
Palestinian territory occupied since 1967