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Statement of Zachor Legal Institute Regarding United Nations Human Rights Council Resolution 31/36.

The United Nations Human Rights Council ("UNHRC") is in the process of preparing a "blacklist" of companies that do business with and in the State of Israel. The purported justification for the UNHRC's blacklist is to identify companies that participate, directly and indirectly, in the functioning of Israel's control of certain territories also claimed by Palestinian Arabs.

These territories, occupied by Israel after a number of wars with neighboring belligerent states, have been the subject of intense and long-lasting negotiations for decades, yet the UNHRC has implicitly and unilaterally decided that their status has been definitively resolved entirely in favor of Palestinian Arab claims. This declaration is not only at odds with reality, it is in direct contravention of existing United Nations resolutions that require the parties to negotiate a final status of the territories. Furthermore, the declaration ambiguously defines the "occupied territories", ignoring legitimate Israeli claims to sovereignty and making it nearly impossible for any company to know with certainty whether it is operating in those territories.

Nonetheless, the UNHRC is moving forward to weaponize the blacklist by creating a database of businesses that engage in a wide range of activities in the amorphously defined occupied territories. The activities that can subject a business to inclusion in the blacklist include providing any of the following to or in furtherance of "settlements" (a term with no set meaning, but clearly meant to apply exclusively to Jewish residents in "occupied territories"):

- Construction materials;
- Security services;
- Basic utilities and related services;
- Banking and other financial services;
- Natural resource development; and
- Any other activity that could be deemed to assist in "developing, expanding and maintaining the settlements".

In short, the UNHRC blacklist has been designed to identify, marginalize and punish any businesses that have even the most remote connection to Jewish activity in historically Jewish lands that have recently been claimed by Palestinian Arabs. As many others have noted, this is

thinly veiled religious and national origin discrimination with the imprimatur of the international community.

Some have also noted that if the UNHRC blacklist is finalized and implemented, it will constitute a form of sanctions to be imposed upon Israel. Because only the United Nations Security Council has the authority to impose sanctions, however, it is likely the case that any use of the UNHRC blacklist to punish businesses would be violative of the United Nations Charter.

More important for any business that may take actions (or refrain from doing business) in territories controlled by Israel to comply with the UNHRC blacklist, if one is implemented, is the wide ranging legal impact under federal and state laws in the United States.

Unlike duly ratified treaties and certain United Nations Security Council resolutions, UNHRC resolutions are not binding law, especially with regard to the United States (or any individual U.S. state). Businesses that choose to comply with the UNHRC blacklist would do so voluntarily. Moreover, the United States Congress is currently debating an act that will, if enacted, specifically prohibit participation in boycotts against Israel fostered by the United Nations. This act reinforces the principles set forth in existing federal anti-boycott laws that explicitly prohibit compliance with anti-Israel boycotts, such as the Arab League boycott and boycotts undertaken in coordination with the so-called "BDS movement". The penalties for violating existing federal anti-boycott law include significant fines, criminal prosecution and the loss of favorable tax benefits.

Consequently, if a business were to either refuse to do business with a company on the UNHRC blacklist or refuse to do business with Israel or entities in the territories controlled by Israel in order to avoid being placed on the UNHRC blacklist, that business would not only be in violation of United States' federal laws, it would also be subject to penalties applied under state anti-boycott laws.

Currently, there are 24 states in the United States that have implemented some form of anti-boycott law. The states include California, Florida, Georgia, Illinois, New Jersey, New York, North Carolina, Ohio, Pennsylvania and Texas, which comprise the states with the top 10 gross domestic products in the United States.

State anti-boycott laws either prohibit the state from doing business with entities that boycott Israel, require that the state divest from any investments in businesses that boycott Israel, or, in some states, both prohibit the state from contracting with, and require divestment from, entities that boycott Israel.

The impact of violating state anti-boycott laws is significant. California, for example, will have state spending of nearly $200 billion in 2017. California also recently enacted an anti-boycott law that would be violated by participation in the discriminatory UNHRC blacklist. A business that chooses to comply with the discriminatory UNHRC blacklist would no longer be eligible to partake in the market created by hundreds of billions of dollars spent each year by the State of California.

The States of Illinois, New Jersey and New York, as another example, each require divestment of state funds from investments in companies that boycott Israel. The current combined value of those three states' pension funds is nearly half a trillion dollars. As state anti-boycott laws often require the state to also request that any mutual funds they invest in divest from investments in companies that boycott Israel, the potential impact of compliance with the UNHRC blacklist on the market for securities of publicly traded boycotting companies will be severe.

This bears repeating: because UNHRC resolutions are not binding on individual U.S. states, and state anti-boycott laws contain no exceptions for voluntary compliance with extra-territorial mandates, a business that participates in the UNHRC blacklist should not expect to find any applicable exemptions in state anti-boycott laws. As a result, a company with international operations may initially believe that it is in its best interests to comply with the UNHRC blacklist, but it will find itself facing the draconian unintended consequence of being excluded from some of the most lucrative government purchasing and investing markets in the world. To illustrate the potential impact, California which if it were an independent country would have the 6th largest economy in the world, cannot enter into contracts with businesses that engage in discriminatory boycotts, such as the UNCHR blacklist.

Businesses with international operations may find themselves in a no-win situation if the UNHRC blacklist is implemented. On the one hand, some countries may either directly or indirectly require compliance with the blacklist as a condition to doing business in that country. On the other hand, compliance with the blacklist would, at a minimum, disqualify that company from doing business in political subdivisions of the United States and, potentially, subject it to criminal, civil and tax repercussions.

It is in the economic and moral interests of all businesses to speak out against the proposed discriminatory UNHRC blacklist.

Zachor Legal Institute has assisted in the legislative enactment and enforcement of anti-boycott laws in a number of states.

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