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SHRINKING SPACE & THE BDS MOVEMENT

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Shrinking Space and The BDS Movement

Whose Spaces Shrinking?

Across the globe, the first decades of the twenty-first century have been tumultuous. The world continues to reel from the bitter consequences of the post-9/11 Global War on Terror and the US-UK invasion and occupation of Iraq, the international financial crisis of 2007-08 and the recession that resulted, the Arab Spring and its sometimes catastrophic aftermaths including the multiple wars in Syria. The numerous refugee crises of 2015 and beyond, the rise of Donald Trump in the US, and his administration's enabling of an expanding cast of authoritarian leaders in a widely disparate array of countries, are all putting marginalized communities — refugees, other migrants, immigrants, Muslims, children, people of color, LGBTQ communities, poor people in general — at enormous risk. Parties grounded in racism, xenophobia, corporate greed, misogyny, militarism, Islamophobia, are all vying for popular support and power in many countries, achieving one or both in far too many places. Hundreds of millions of people have paid – and are still paying – the price.

At the same time, social movements continue to rise, challenging those dangerous trends. New resistance mobilizations created, tired movements reenergized, future-oriented movements re-envisioned to challenge existing and rapidly escalating local, national and global crises. In some countries social movements have morphed into political parties and begun engaging directly with power. Unarmed uprisings — of poor people and communities of color, of teachers and nurses, of low-wage workers, of oppressed racial and religious minorities, of civilians in war zones and people living under military occupation, all took shape.

Not surprisingly, powerful economic and political forces opposed to those non-violent resistance movements escalated their response, relying on governmental and corporate-driven tools to suppress these insurgent champions of a different national and world order.

So a widening pattern of repression of social movements has taken shape around the world, from the supposed democracies of Europe, North America and beyond, to the many countries long known for harsh crackdowns on opposition voices. Everywhere, space for dissent is shrinking rapidly. We see governments and corporations alike working to suppress and silence movements, organisations and individuals who organise against the escalating repression.

This shrinking of the public space threatens virtually all social movements challenging entrenched economic, political, military and security power structures. Those in power are waging a continual battle to deny dissident movements and civil society more broadly access to the legality, physical safety, public access, and ability to build organisations and institutions, hoping to undermine or short-circuit their campaigns.

As FIDH, the International Federation for Human Rights describes it, “In many countries the authorities place considerable restrictions on civil society's free space by not hesitating to overstep the law with the support of the judiciary or by adopting laws which increasingly threaten freedom and which focus particularly on NGOs' access to funding, registration requirements and controlling the activities of organisations or freedom of assembly. This legal arsenal can be exported from one country to another in order to stifle all forms of promoting and defending human rights. Increasing numbers of laws and bills, intended to regulate the activities of NGOs, contain measures to restrict access to funding, particularly when sourced from abroad. At the same time, the issue of funding is being used as a tool to discredit NGOs among populations and donors.”¹ The good news, however, is that sometimes some of these tools fail. Some of the efforts by governments and corporations aimed at delegitimizing civil society, some of these efforts aimed at undermining movements for human rights and campaigns against rising racism, war, and more – some of them fail. Sometimes, despite all the money invested, all the laws brought to parliaments and regulations imposed by autocrats, despite all the prosecutors willing to bend the law to the point of breaking it – sometimes they still don't work. Sometimes we fight back – and the space doesn't really shrink as much as they hoped it would.

A Case Study: The BDS Movement – Origins & Beyond

In 2005, a group of Palestinian activists launched the Boycott, Divestment and Sanctions (BDS) Movement, a global campaign aimed at pressuring Israel to end human rights violations. At its launch, the BDS Call was backed by some 170 various trade unions, political groups, women's organisations, popular committees, and other Palestinian civil society bodies. Within 48 hours of the Call's announcement, it was endorsed by the International Coordinating Network on Palestine, a group of several hundred UN-recognized Palestine solidarity organisations around the world whose steering committee was meeting in Paris.

As is clear from the BDS movement's website, at the heart of the boycott campaign is a challenge to the impunity enjoyed by the State of Israel for human rights violations that, when committed by other governments, have prompted international censure and sanction.² "For nearly seventy years, Israel has denied Palestinians their fundamental rights and has refused to comply with international law", the BDS movement writes. Israel's "regime of settler colonialism, apartheid and occupation over the Palestinian people...is only possible because of international support", it continues.

Governments fail to hold Israel to account, while corporations and institutions across the world help Israel to oppress Palestinians. Because those in power refuse to act to stop this injustice, Palestinian civil society has called for a global citizens' response of solidarity with the Palestinian struggle for freedom, justice and equality.

Explicitly referencing the South African Anti-Apartheid movement as a source of inspiration, the BDS movement makes clear it does not exist in a historical or political vacuum. Rather, it self-consciously carries the flame from other similarly situated historical political struggles for indigenous self determination and against colonialism, that also include the American Indian Movement, the Civil Rights and Black Power movements in the U.S., and many others. The BDS campaign urges "non-violent pressure on Israel" until it "meets its obligation to recognize the Palestinian people's inalienable right to self-determination and fully complies with the precepts of international law".³

Three specific demands are cited: first, "ending its occupation and colonization of all Arab lands and dismantling the Wall"; second, "recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality"; and third, "respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN resolution 194". Those three demands, crucially, stand alone. They do not choose among, or stipulate, political frameworks for the realisation of those rights – for example, two-states, or a single, democratic state – but rather affirms their inalienability and centrality in any final settlement.

In recent years, the BDS campaign has grown considerably, across continents and in various sectors.⁴ French multinational Veolia sold its Israeli subsidiaries and abandoned Israel as a market altogether in 2015, after a global campaign targeted its links to occupation and settlements.⁵ Irish construction giant CRH withdrew from the Israeli market in 2016, while British security company G4S is also set to ditch its Israeli interests after a BDS campaign focused on its role in Israeli prisons and other occupation infrastructure.⁶ These companies and others have lost contracts as a result of BDS campaigning, as well as suffering reputational damage.⁷ BDS has been backed by numerous trade unions, while divestment campaigns have gained traction amongst a variety of financial institutions, investors, and pension funds, including in the Netherlands, Scandinavia, and amongst mainline Protestant church denominations in North America.⁸

In March 2016 – in what the BDS Movement described as a sign that "the logic of appeasing Israel's regime of oppression has started giving way to the logic of sustained international pressure" – the UN Human Rights Council voted to establish a database of international businesses "involved in activities" in the oPt.⁹ That same month, a report in Israeli newspaper Haaretz claimed that "a growing number of Israeli companies operating in the West Bank are moving their facilities to locations within [pre-1967 territory]", as a response to "international boycott pressures and other constraints".¹⁰ In January 2018, the UN's Office of the High Commissioner for Human Rights published a report¹¹ on the work being done to compile the database, in which it said that 206 companies

– the majority Israeli and American – had thus far been identified as connected to the settlement enterprise. The BDS Movement has also seen considerable take-up amongst university students in Western Europe – the UK in particular – and North America. The website of National Students for Justice in Palestine (SJP), for example, an umbrella group for US campus-based solidarity groups, cites more than 50 victories in students' councils across the US since 2012.¹² In 2015, the British National Union of Students (NUS) voted to endorse BDS, mandating the confederation of some 600 students' unions to support the boycott campaign in various ways.¹³ In 2016, graduate students at New York University voted to boycott Israel in what a pro-BDS Israeli activist and doctoral student said was indicative of how justice in Palestine had become "one of the defining political issues of our time".¹⁴ That same year, the largest student union in Britain – the University of Manchester – voted to endorse BDS.¹⁵ Academic unions have also fiercely debated, and in some notable cases endorsed, BDS. In the US, the Association for Asian American Studies, the American Studies Association, the Native American and Indigenous Studies Association, and National Women's Studies Association, have all endorsed a boycott of Israeli academic institutions, while in the UK, hundreds of academics have publicly declared their backing for the academic boycott.¹⁶ "As a global boycott movement against Israeli universities gains steam", Associated Press reported in February 2016, "Israeli professors say they are feeling the pressure from their colleagues overseas".¹⁷

Recent years have also seen growing support for the cultural boycott of Israel, with hundreds of artists and cultural figures from around the world heeding the call, including Alice Walker, Henning Mankell, Roger Waters, Naomi Klein, Ken Loach, Judith Butler, Elvis Costello, and Mira Nair.¹⁸ In February 2015, almost a thousand UK artists signed a pledge in support of the cultural boycott.¹⁹ By spring 2014, New York-based Israeli writer Reuven Namdar wrote of how "the international boycott...is slowly solidifying around Israel's cultural life".²⁰ In 2015, curators held a meeting in Tel Aviv on "The Cultural Boycott of Israel and What It Means for Israeli Contemporary Art". According to a report on the gathering, the boycott "is practiced overtly as well as covertly, officially and unofficially, and by a variety of groups within the art world".²¹ When well-known public figures engage with the boycott, BDS has attracted mainstream attention; a good example of this was the refusal in February 2017 of US football star Michael Bennett to participate in an Israeli government-organised 'good will' tour.²²

In this context, repression of BDS is hardly surprising, as successful examples of direct democracy and people power fly in the face of efforts to cow and silence activists and movements. And despite, or perhaps partly because of that repression, the continuing fight-back of BDS advocates and activists is hardly surprising as well. That bold fight-back is, so far, succeeding at holding back the efforts to shrink the space in which BDS - and other parts of the movement for Palestinian rights - continue to thrive.

The Israeli counter-offensive

As the BDS campaign started to gather momentum, and pro-Israeli analysts started to worry, Israeli officials were initially slow to respond. In 2010, the Reut Institution, a mainstream Israeli think tank, identified BDS as part of the movement to delegitimize Israel. It went on to claim that the delegitimizers were winning, because "while Israel's formal diplomatic position remains relatively strong and solid, its standing among the general publics and elites is eroded."²³ Two years later, some Israel advocates had labelled BDS a "real threat".²⁴ But official Israeli responses were tepid until about 2014, even before the international outrage prompted by the lethal assault on the Gaza Strip that summer, when Israeli politicians started to take serious notice.²⁵ In February 2014, Israeli Prime Minister Netanyahu slammed the boycott movement as "classical anti-semites in modern garb", remarks The Guardian described as a reflection of "anger and anxiety in Jerusalem about BDS".²⁶

Israeli fears and responses escalated. The following month, then-Labor leader and Zionist Camp opposition head Isaac Herzog, affirming his strong opposition to BDS, acknowledged that "unfortunately it is turning into a strategic threat."²⁷ By 2015, the Israeli government commissioned an internal report on the potential future damage of a boycott, with the worst case scenario seen as "devastating" for the economy.²⁸ In June 2015, The Guardian noted how "Israel and key international supporters have sharply ratcheted up their campaign against the

Palestinian-led Boycott Divestment and Sanctions (BDS) movement, with senior Israeli officials declaring it a strategic threat”, language that the government “usually reserves for the likes of Hamas or Iran’s nuclear programme”.²⁹ In September 2016, Israeli justice minister Ayelet Shaked described BDS as “a new extension of terrorism”, comparing the campaign to “underground tunnels into Israel [from the Gaza Strip]”.³⁰ In early 2017, strategic affairs minister Gilad Erdan told Bloomberg: “Israel is in the midst of a cognitive war, which is part of a new strategic challenge”, identifying adversaries such as “non-violent campaigns like Boycott, Divestment, Sanctions”.³¹

The unprecedented Israeli offensive on Gaza in 2014, which killed some 2,200 Palestinians, increased global support for the BDS Movement, and prompted even long-time friends of Israel to express public criticism of the ongoing occupation. Thus, if Israeli officials had initially been inclined to ignore, or even mock the BDS campaign, they soon started to take it very seriously indeed. In one small, but instructive illustration, an Israeli diplomat based in the embassy in London in 2016 had a map of Britain on his wall which, according to Haaretz, “show[ed] the front – the main [university] campuses, the deployment of pro-Israel activists and the location of the ‘enemy forces’”.³² In February 2016, an Israeli Foreign Ministry spokesperson told the Financial Times: “We have stepped up our efforts directly and indirectly, dealing with friends of Israel in a variety of countries in which we have the BDS movement, fighting it with legal instruments”.³³ That year, NIS 100 million (US\$28 million) was allocated by the government to fight BDS, with officials also revealing – in remarkably candid comments to an Associated Press journalist – that they would use cyber technology to fight BDS campaigners, including through “actions [that] will not be publicly identified with the government”.³⁴ And indeed, Israel’s London embassy would hit the headlines again in early 2017, when an undercover Al Jazeera investigations team exposed some of the efforts being exerted by Israeli diplomats to undermine the BDS campaign and Palestine solidarity activism in the UK more broadly.³⁵

Over the years, one of the main forums for Israel and its advocates to discuss and strategize how to tackle BDS and Palestine solidarity activism has been the Ministry of Foreign Affairs-convened bi-annual Global Forum for Combating Anti-Semitism (GFCA). At the 2009 conference, an anti-BDS working group proposed “hav[ing] in place legislative prohibitions vs. BDS which can then be applied in different communities, acknowledging the different legal traditions”.³⁶ Four years later, an ‘action plan’ produced by the Forum’s ‘BDS and Delegitimization Task Force’ included: “Identify laws that can be used in different countries or states to fight discriminatory practices such as BDS”.³⁷ At the 2015 Forum, the BDS-focused working group – under the title ‘Lawfare’ – called for “Pursu[ing] legislation at the local, state and federal level to constrain BDS”.³⁸ This was not idle talk. An AFP report described how Israel, despairing of ever winning “the battle for public support” in many countries, “has instead increasingly focused on measures limiting BDS legally”.³⁹ In November 2016, Israel’s envoy to the UN, Danny Danon, said: “We’re advancing legislation in many countries...so that it will simply be illegal to boycott Israel”.⁴⁰ In February 2018, Israel’s Minister of Strategic Affairs Gilad Erdan, tasked with overseeing the fight against BDS, told a conference of lawyers that “in the fight against anti-Israel de-legitimization and boycotts, the legal arena is key”.⁴¹ The stage for attempting to criminalize BDS was set.

The home front – Israel legislates against BDS

Israel’s efforts to combat BDS have also focused on its ‘home front’, where legislation and state-level intimidation has sought to undermine the political activism of international visitors and of Israeli citizens themselves. In July 2011, the Knesset approved the Bill for Prevention of Damage to the State of Israel Through Boycott, which allows private citizens to sue boycott advocates for damages.⁴² While earlier versions of the legislation created a criminal offence, the provisions of the final version “sanctioned the promotion of boycott as a civil offence”.⁴³ The law “imposes sanctions on any individual or entity that calls for an economic, cultural or academic boycott of Israel’s West Bank settlements or of Israel itself”, and it was subsequently upheld almost in its entirety by the Israeli Supreme Court.⁴⁴

In March 2016, Intelligence Minister Yisrael Katz advocated engaging in “targeted civil eliminations” of BDS leaders with the help of Israeli intelligence, “using language that deliberately evoked the Hebrew term for ‘targeted assassinations’”.⁴⁵ Omar Barghouti, one of the founders of the BDS Movement who has permanent residency status in Israel, has been subjected at various times to a de facto travel ban, threats to revoke his residency, and legal harassment.⁴⁶ In 2017, it emerged that Strategic Affairs Minister Gilad Erdan was seeking to “expand the surveillance activities of his ministry to include Israeli citizens”.⁴⁷

In addition, at the time of writing, a new bill is being advanced in the Knesset that seeks to exempt the government’s anti-BDS efforts from the country’s Freedom of Information Law.⁴⁸ Meanwhile, in early 2017, the Knesset passed a new law, which “forbids granting entry visas or residency rights to foreign nationals who call for economic, cultural or academic boycotts of either Israel or the settlements”.⁴⁹ Soon after, members of an interfaith group from the US were barred from catching a flight before they even boarded, after Israeli authorities informed Lufthansa the individuals would not be allowed to enter –one Muslim leader, one Christian activist from the Presbyterian Church, and three Jews active in Jewish Voice for Peace, one of whom was a rabbi.⁵⁰

The US battleground

Given the power and influence of pro-Israel lobbies and other supporters in Washington DC and across the country, there was little difficulty in identifying political, media and other forces willing to work towards implementing Israel’s own anti-BDS goals in the United States. Those forces have made significant gains in pushing not only a broad anti-Palestinian, Israel-can-do-no-wrong agenda, but a specific agenda against BDS. They are trying hard to narrow the political space in which the BDS movement, and the broader Palestinian rights movement within which it thrives, can operate. They have succeeded in proposing laws and regulations, tightening restrictions especially on student backers of BDS, and doing their best to demonize its supporters. No doubt the effect has been to chill the discourse, and in some cases, to frighten targeted activists. But it remains an open question whether the effort to shrink the spaces of the BDS campaign will actually succeed. So far, students are fighting back, some courts are finding anti-BDS laws to be unconstitutional, and Israel’s supporters are increasingly on the defensive.

BDS is facing an escalating set of attacks precisely because it is winning. It is playing a major role in engaging student, faith-based, community and other activists in a global-but-local engagement that challenges Israeli violations of human rights and international law with a set of non-violent pressure tactics that are showing real results. The public discourse on Israel-Palestine in the United States has been shifting for some years; one powerful example was the 2015 decision of 60 members of the US congress to “skip the speech” of Israeli Prime Minister Binyamin Netanyahu when he came to Washington to lobby against President Obama’s Iran nuclear deal. That was an unprecedented snub of the once-invincible pro-Israel lobby, and the fact that none of those members lost their seat as a result, was an important piece of evidence of how criticizing Israel is no longer tantamount to political suicide in the US.

So part of the reason for the recent escalations in attacks on BDS activists is precisely because Israel’s supporters realise they are losing public support - particularly from young people. That also explains why the attacks are so much tougher, indeed often vicious, against potentially vulnerable student activists, than on the mainstream churches whose billion-dollar endowments’ divestment commitments threaten Israeli economic interests far more directly.

The attacks, however, do continue. They intimidate, they frighten, and they chill the debate. But so far, while the space remains contested, it is not immediately shrinking.

In March 2017, a bill was tabled in the US Congress that would prohibit American citizens and companies from participating in or supporting boycotts of Israel called for by “international governmental organisations like the United Nations or the European Union.”⁵¹ The Israel Anti-Boycott Act, which would amend pre-existing legislation concerning international trade and foreign government-sponsored boycotts, would impose “severe civil and

criminal punishment” on violators. The bill was originally co-sponsored by 32 Republicans and 15 Democrats. The bill attracted considerable criticism, not only from Palestinian rights organisations but as well from a much broader alliance of civil rights groups who recognised that it constituted an infringement on First Amendment rights to free expression. Notably, the American Civil Liberties Union (ACLU), perhaps the most influential civil rights organisation in the country and one that wields significant clout among liberal and other Democrats, wrote to all the bill’s co-sponsors in defence of the right to boycott.⁵² The bill itself specifically referenced the aforementioned UN database of companies complicit in Israeli occupation, an indication of just how much of a threat – or potential threat – such a step was perceived to be by Israel and its supporters. In January 2018, following the UN Human Rights Office’s publication of an update on the compilation of the database⁵³, pro-Israel lobby group the American Israel Public Affairs Committee (AIPAC) urged Congress “to move quickly to adopt the Israel Anti-Boycott Act”, legislation it described as “essential to protect our ally Israel and American businesses that could be the target of a boycott.”⁵⁴

However, in an indication of the diminishing, though still powerful, influence of the Israel lobby, the bill actually began to lose support soon after it was introduced. In March 2017 the bill was forwarded to the Senate’s Committee on Banking, Housing, and Urban Affairs, where it has languished ever since. Senator Kirsten Gillibrand (A Democratic Senator from New York) was the first to officially withdraw sponsorship.⁵⁵ Pressure from free speech defenders and Palestinian rights organisations continued. By August 2017, AIPAC felt compelled to push back directly against the freedom of speech pressure, issuing a new statement focusing on how weak the proposed resolution really was. “The bill only regulates commercial conduct intended to comply with, further or support unauthorized foreign boycotts,” AIPAC wrote. “Accordingly, under the proposed legislation, companies and individuals would be barred from refusing to conduct business with Israel in order to satisfy a request from the United Nations or European Union. However, they would remain entirely free to boycott Israel on their own volition.”⁵⁶ By March 2018 the congressional sponsors of the bill, attempting to answer the ACLU and other opponents, made some small amendments, including clarifying that violations of the anti-sanctions act would lead only to financial penalties, not prison. But the critics did not waiver - the bill was still a violation of constitutional guarantees of free speech.

Ironically, the AIPAC statement mirrored the view of the many analysts who had determined that the bill’s limited focus on boycotts called by other governments or inter-governmental organisations meant that it did not actually prohibit support of the BDS call. Rather, it gave new credence to the view that while the bill’s intention was to intimidate supporters of BDS, it did not, in fact, render support for the movement criminal.

Neither the United Nations nor the European Union, of course, has ever called for a boycott of Israel. The only thing remotely similar to that claim was a report from the UN Office of the High Commissioner for Human Rights explaining its work in compiling a list of private enterprises profiting from Israel’s illegal settlement project. “Businesses play a central role in furthering the establishment, maintenance and expansion of Israeli settlements,” the report stated, indicating that the OHCHR believed therefore, that due diligence required that “business enterprises” operating in the Israeli-occupied Palestinian territory, “may need to consider whether it is possible to engage in such an environment in a manner that respects human rights.”⁵⁷

The anti-BDS push on Capitol Hill was preceded and accompanied by a wave of anti-boycott bills at state level. Unlike the efforts (so far unsuccessful) to criminalize boycott support, which is aimed primarily at campus-based activists (see below), much of the state legislation focuses on regulation of state contracts, prohibiting financial state ties with companies who might comply with the boycott. There is specific mention of pension funds, many of which already have human rights ‘screens’ to exclude certain categories of violating companies from their portfolios. But there is little specific reference to church denominations, some of which maintain huge endowments and pension funds, whose acceptance of boycott and divestment positions consistent with BDS would have significant negative impact on Israeli economic interests. That may be because of legislators’ reluctance to challenge powerful church hierarchies, or may reflect the view that students and young people, even those with smaller-scale BDS victories, are a more important target when viewed from the vantage point of maintaining strong public support for Israel and for US protection of Israeli impunity.

In early 2016, Israeli newspaper Yediot Ahranoth reported how, “in cooperation with Jewish and pro-Israeli organisations”, the Israeli government had “convinced several American states to pass legislation against the boycott of Israel”.⁵⁸ The article explained that “the need for this arose after several American pension funds divested from Israel following capitulation to the boycott movement”, adding: “such legislation, it became apparent, is the most effective weapon against boycott”. New York’s Governor Andrew Cuomo led the states’ charge in June 2016, issuing what he claimed to be the first in the nation Executive Order directing New York state agencies to divest from public funds supporting BDS.⁵⁹ According to the legal rights and civil liberties group Palestine Legal, “since 2014, at least 102 anti-BDS measures have been introduced in state/local legislatures across the country”, while “as of January 2018, 24 states have enacted anti-BDS laws”.⁶⁰

In early 2018, the Florida anti-BDS law was cited by Republican state legislator Randy Fine to seek the cancellation of two concerts by pop star Lorde in response to her refusal to perform in Israel. The Illinois legislation, meanwhile, “prompted the drafting of a blacklist of companies ‘engaging in actions that are politically motivated and are intended to penalize, inflict economic harm on, or otherwise limit commercial relations with the State of Israel or companies based in the State of Israel or in territories controlled by the State of Israel’”, an extraordinarily explicit – and broad – attack on Palestine solidarity activism.⁶¹ In February 2018, it was announced that New Jersey’s government workers’ pension fund will divest from Denmark’s Danske Bank, on the basis that the bank is “boycotting Israeli businesses” (in fact, the bank has a broad list of companies excluded from its investment portfolio on various ethical grounds, only two of which are Israeli⁶²).⁶³

The breadth of some of those state legislative proposals also goes well beyond the language of the Israel Anti-Boycott law pending in the US Congress. That proposal, still stuck in committee, very clearly limits its prohibitions to boycotts carried out in response to or in compliance with a call to boycott from a foreign government or an inter-governmental organisation like the United Nations. Some of the state proposals do not include any such restriction, instead theoretically including boycotts for any reason at all.

The ACLU, referring to this “wave after wave of legislation seeking to stamp out boycotts and divestment campaigns aimed at Israel”, noted: “None of them comport with the First Amendment”.⁶⁴ On 30 January, 2018, in what was hailed by the ACLU as “the first decision of its kind”, a federal judge “blocked enforcement of a Kansas law targeting boycotts of Israel, ruling in an ACLU lawsuit that the First Amendment protects the right to engage in political boycotts”.⁶⁵ The law, which requires any person or company contracting with the state to sign a statement that they are “not currently engaged in a boycott of Israel”, was challenged by the ACLU on behalf of Esther Koontz, a schoolteacher who refused to sign the certification. The ACLU noted that the judge’s ruling was the first “to address a recent wave of laws nationwide aiming to punish people who boycott Israel”, adding that “it should serve as a warning to other states with similar provisions, including one we are challenging in Arizona”. Some Israel advocacy groups are undeterred however, with StandWithUs, the Israel Project and the Israel Allies Foundation, filing an amicus brief in February 2018, in support of the 2016 law forcing state contractors to sign a certification disavowing boycotts of Israel.⁶⁶

Repression on US Campuses

In addition to the formal, overt US and state legislative initiatives suppressing BDS speech and in some cases criminalizing it, numerous informal speech suppression campaigns have been conducted primarily on college campuses for over a decade since the launch of the BDS Movement. The attacks on students are grounded on the very real fears of Israel and its U.S. supporters that they are losing their influence on young people. The attacks on students and student organisations often reflect a particular intensity as a result. These pressure campaigns have been operated by well-resourced pro-Israel groups such as the Zionist organisation of America, US state elected officials, as well as by the college administrators themselves, using familiar tactics of falsely conflating BDS with anti-semitism and anti-semitic violence⁶⁷, threatening to withhold funding⁶⁸, and various forms of targeting and harassment.⁶⁹ In some instances, state prosecutors took the suppression one step further by

criminally prosecuting university students for their BDS activism. It is not an accident that given the powerful history of social justice activism on US university campuses, the Israeli government and non-governmental Israeli organisations wish to stifle BDS organising on these university campuses. It should also be noted that these powerful forces are crashing down on a majority university-age student population. The case studies are too numerous to detail, but the following examples serve to illustrate the larger picture of US campus BDS repression.

In perhaps one of the most well publicized and arguably harshest examples of BDS repression on a US college campus, the “Irvine 11”, as they came to be known, and their battle for justice left lasting impacts on the University of California Irvine campus and BDS advocacy to this day. In February of 2010, Israeli Ambassador Michael Oren was invited to speak at the University, and eleven Muslim students publicly voiced their opposition with their own political message, interrupting the Ambassador with their own short statements. And though the University disciplined and suspended the Muslim Student Union, the District Attorney took the unusual escalated step of criminally charging the students.⁷⁰ Ten stood trial, all of whom were convicted of misdemeanours and sentenced to community service and probation.⁷¹ The students appealed with organisations such as the Center for Constitutional Rights filing supportive amicus briefs⁷², but their conviction was upheld by the Court of Appeals in 2014.⁷³ Though many students both before and after this incident had protested vigorously on campus, it seems that only those that focused on BDS and Palestine advocacy were selectively targeted for speech suppression and criminalization.⁷⁴

A January 2013 event hosting Judith Butler and Omar Barghouti at the City University of New York (CUNY) Brooklyn College had large-scale ramifications that can still be felt throughout college campuses. When Brooklyn College student organisers announced plans to host a panel discussion about BDS with Butler, the well-known academic and BDS supporter, and Barghouti, the Palestinian activist best known as one of the co-founders of the BDS call, the students were not expecting opposition to the event to go national, including Harvard law professor and staunch hardline Israel supporter Alan Dershowitz⁷⁵ as well as New York City politicians. Numerous elected officials and politicians joined Dershowitz in pressuring the University to cancel the event⁷⁶, and New York City Council members, including Assistant Majority Leader Lewis Fidler, called to withdraw funding from the University in a letter to the University President signed by numerous other New York City Council Members.

The event was held on February 7, 2013, but not without heavy security including two checkpoints and a metal detector staffed by public safety officers. Anti-BDS protesters gathered outside.⁷⁷ After the event, pro-Israel students alleged Students for Justice in Palestine (SJP) students removed them during the event because they were Jewish, which the SJP students denied, stating they were removed because they were disruptive.⁷⁸ Pro-Israel forces threatened to file Title VI Civil Rights complaints, which led CUNY’s general counsel to embark on a two month long investigation. The April 2013 report concluded that the SJP students had not discriminated against anyone on the basis of religion or political viewpoint.⁷⁹ The report in fact criticized the CUNY administration.⁸⁰ The ZOA still filed a Title VI complaint in July 2013 even after the CUNY general counsel’s findings. University President Karen Gould still publicly issued an apology to the removed students stating it was likely due to their opposition to BDS⁸¹, and the Zionist Organization of America and the Brandeis Center publicly praised President Gould’s statement.⁸² To this day, CUNY SJP students (not just on the Brooklyn College campus but at other CUNY venues as well) report facing close administrative scrutiny and difficulty in organising their events on campus.⁸³

In early 2016, the Zionist Organization of America (ZOA) publicly called for all the City University of New York (CUNY) SJP chapters to be banned from the twenty-three CUNY campuses across New York City. The organisation alleged that SJP’s anti-semitism and anti-Jewish violence created a hostile environment for Jewish students, citing Title VI of the Civil Rights Act.⁸⁴ Thirty-five New York legislators followed by calling for the SJPs to be immediately suspended⁸⁵, and the New York State senate, with Governor Andrew Cuomo leading the charge⁸⁶, threatened to cut \$485 million of CUNY’s funding.⁸⁷ The ZOA-initiated attacks prompted CUNY to convene an independent task force, led by a former federal prosecutor and federal judge. Their six-months-long investigation concluded in their 2016 report that the alleged incidents of anti-semitism on CUNY campuses were not, in fact, attributable to SJP.⁸⁸

The virulence of the campaign against pro-BDS students reflects the fear among Israel supporters that the youth — particularly Jewish youth — are increasingly moving away from a once-automatic embrace of Israel. Instead, shifting discourse inside the Jewish community is creating a very different environment for young activist Jews: for the first time in the US, Jewish community organisations reflect a wide range of right, centre and left approaches to peace and justice issues in general and to Palestinian rights in particular. For those students and other young Jews, looking at AIPAC, ZOA and related organisations on the right, J-Street with its “pro-Israel/pro-peace” but anti-BDS mantra, and organisations like Jewish Voice for Peace on the left, the fears of the pro-Israel organisations are well-founded. Young Jews who choose Jewish-identified peace and justice organisations are turning to Jewish Voice for Peace, Open Hillel, If Not Now and others, as well as to Students for Justice in Palestine and a wide range of broader groups. Jewish Voice for Peace, or JVP, which explicitly endorses the BDS call, is by far the largest of the Jewish organisations calling for various versions of an end to occupation and Palestinian rights. And so far, the efforts to criminalize BDS, while intimidating and chilling to students’ rights, have failed to derail the US movement.

Israel targets BDS in Europe

In the UK, the effort to suppress the BDS movement has been one of intimidation, rather than criminalisation. In October 2015, the ruling Conservative Party announced it would be introducing “new rules to stop politically-motivated boycott and divestment campaigns by town halls against U.K. defence companies and against Israel”.⁸⁹ These ‘new rules’ would, it was claimed, “affect procurement policy for publicly-funded bodies, and local authorities’ pension fund legislation”.⁹⁰ Yet when, in February 2016, the government duly published a procurement guidance note, there was no new legislation. Commenting at the time, the Palestinian BDS National Committee (BNC) said the Conservative government’s actions were “an attempt to intimidate”, and emphasised how “it remains perfectly legal for councils and universities to take ethical stances that reflect the views of their communities and exclude companies that violate human rights or commit other forms of gross misconduct from tender exercises”.⁹¹ The promised changes in pension investment regulations did materialise, despite overwhelming opposition during a public consultation exercise (98 percent of respondents rejected the proposals).⁹² However, just eight months after the new regulations came into force, key elements were struck down in the High Court, after legal action brought by the Palestine Solidarity Campaign and other activists.⁹³ The ruling came almost exactly a year after Jewish Human Rights Watch, a pro-Israel advocacy group focused on lawfare, lost – again in the High Court – its legal action against three local authorities who had passed resolutions in support of Palestinian rights.⁹⁴

There have been more successes for Israel in France, the only country – outside of Israel – where those who merely advocate for BDS can be penalised. Interestingly, this is not a result of new laws, but rather thanks to the exploitation of long-standing legislation (from 1972 and 2003) designed, ironically, to combat racism.⁹⁵ The protection from discrimination and hatred offered in French legislation to “national groups” (as well as ethnic groups, races and religions), gave pro-Israel groups a chance to prosecute BDS activists — and they have eagerly pursued those options.⁹⁶

Indeed, the legislation has been described as “among the world’s most potent legislative tools to fight the growing [BDS Movement]”, with attendees at the aforementioned Global Forum for Combating Anti-Semitism (GFCA) in 2015 urging France’s laws to be “replicated where possible elsewhere in Europe”. For French BDS activists, this has had real consequences, with a number already convicted based on their participation in non-violent pro-boycott demonstrations.⁹⁷ The political atmosphere in France already encouraged such prosecutions; in 2010, Justice Minister Michèle Alliot-Marie urged French prosecutors to go after those who advocate a boycott of Israel, on the grounds of incitement to hatred.⁹⁸ In January 2016, Prime Minister Manuel Valls told the umbrella Jewish body CRIF (which has backed the prosecutions): “We have passed from criticism of Israel to anti-Zionism and from anti-Zionism to anti-Semitism”, adding, “We will be taking measures that will demonstrate that enough is enough and we cannot allow everything in our country”.⁹⁹

Elsewhere in Europe, there have been mixed results for Israel's anti-BDS offensive. In Italy, "a draft law to stifle the BDS movement has been deposited for examination at the Senate", again on so-called anti-discrimination grounds.¹⁰⁰ In Spain, pro-Israel activists have pursued lawsuits targeting local municipalities that have declared themselves "free from Israeli apartheid".¹⁰¹ According to one report in early 2018, while some 50 municipalities in Spain have passed pro-BDS resolutions, "in the past couple of years these resolutions have been undone in 20 such municipalities, either due to the courts or the municipalities repealing them".¹⁰² The effort to squeeze the BDS movement is not succeeding across the board, however. In June 2017, Spain's lower house unanimously backed a resolution affirming "the right to promote boycott, divestment and sanctions (BDS) campaigns".¹⁰³ For many years, efforts in the European Union to hold Israel accountable for its human rights violations, even by such modest means as enforcing existing regulations of EU-Israeli trade agreements, have been stymied by the Netherlands and Germany. But even there things are changing. In the Netherlands, the Dutch parliament adopted a resolution in June 2016 that instructs the government to "end the direct or indirect financing of organisations, which on the basis of their objectives or through their activities support or promote a boycott of or sanctions against Israel". However, in an answer to questions in November 2016, government ministers said that mere "support" for (as opposed to "propaganda" on behalf of) the BDS Movement does not constitute grounds for rejecting financing of a given organisation, since the boycott campaign is protected freedom of speech.

In Germany, the conversation around BDS has evolved over time. A major story on the front page of the New York Times Arts section in July 2018 provided an indication. Titled "Israel, Music and Echoes of Germany's Past," the sub-head described how "A clash over a movement that backs a boycott of Israel has hit the Germany festival scene." It documents how the decision to "disinvite" from the government-supported Ruhrtriennale arts festival a Scottish rap group that had publicly supported BDS, led to a significant debate among influential German and other artists. Much of the article, which noted that "official support for Israel is a non-negotiable position in postwar Germany," included statements from a range of German political figures equating the BDS boycott call with anti-semitism. But in a sign of the shifting currents of attacks on BDS and the increasingly vocal fight-back to those attacks, the article provided a surprisingly even-handed look at the cultural boycott, a key component of BDS campaigns. It included references to other artists who supported BDS, including Roger Waters of Pink Floyd, who remains a cultural icon in Germany for his 1990 "The Wall" concert in Berlin, and one of the most committed artist supporters of BDS.

The Times piece described how the German festival authorities acknowledged that they did not consider either the Young Fathers (the Scottish rap group being disinvited) or criticism of Israeli policy (which is in fact exactly what BDS does) to be anti-semitic. But they went on to justify the exclusion of the band specifically because of its connection to BDS. Other acts threatened to pull out in protest of the cancellation of the Young Fathers, including Laurie Anderson, an influential US musician and artist. In response, "faced with the risk of losing a headline act like Ms Anderson - and possibly others - the festival's director, Stefanie Carp, did an about-face." The Young Fathers rejected the offer, and the Times went on to note that "indeed, conflict over BDS has already begun to spread."¹⁰⁴

In December 2016, some 200 legal scholars and practicing lawyers from 15 European states issued a statement affirming the BDS campaign as "a lawful exercise of freedom of expression", joining the European Union, as well as the Swedish and Irish governments in supporting the right to boycott. "Whether one approves of the aims or methods of BDS is not the issue," the statement said. "The issue is whether, in order to protect Israel, an exception is to be made to the freedom of expression that occupies a central and pivotal place among fundamental human rights. States that outlaw BDS are undermining this basic human right and threatening the credibility of human rights by exempting a particular state from the advocacy of peaceful measures designed to achieve its compliance with international law".¹⁰⁵

Conclusion

The legal, political and propaganda offensive against the BDS Movement is a response to its success as part of the growing, expanding global solidarity movement, and a response to the widening cracks in the Western consensus regarding Zionism and Israel. Some have sought to diminish, or downplay, the significance of BDS, suggesting that Israeli politicians like Netanyahu, as well as right-wing lobby groups, benefit politically and financially respectively from playing up the BDS danger. But while Netanyahu and his backers may indeed win political points among their right-wing base, such criticism of BDS almost always misses the point. Over the last decade, the BDS movement has done exactly what one would hope a dynamic grassroots campaign would do: attract support from numerous kinds of trade unions, church groups, political advocacy groups, human rights bodies, student associations, peace activists, anti-racism campaigners and ordinary people increasingly outraged by Israeli actions. The BDS campaign is, ultimately, a tactic of solidarity; it is not a political programme, it cannot 'free Palestine', and it will always be a component of, not a substitute for, a Palestinian national movement.

The BDS campaign, that began on the margins of the once- but no longer marginalized Palestine solidarity movement, now continues to have an indisputable impact on public debate and discussion; it is influential in ways that only a decentralised, grassroots campaign – in contrast to government propaganda initiatives – can be. BDS has persuaded many US and European Jews, and even some Jewish Israelis that, in the words of writer Gideon Levy, "boycott, divestment and sanctions is the only game in town, the last hope for...change".¹⁰⁶

The historical political and social movements which the BDS movement lifts up as inspiration and precedent also faced repression. In every case, whenever people have fought back against systems meant to demonize people as the "other", to occupy and exploit them through systems designed to steal their land, brand them inferior, and erase their history and culture — that is when movements for dissent, resistance and the demand for democracy were met with heavy state repression. When an unjust status quo was challenged - whether the Jim Crow laws in the US or South African Apartheid - the response from those in power was swift and harsh. Each of these movements was branded as divisive, violent, criminal, facing official government sanction and criminalization. But each of those movements continued to resist – and each of those movements ultimately won.

In July 2016, Netanyahu – somewhat bizarrely – claimed to have 'defeated' the BDS movement.¹⁰⁷ Not only was this untrue, it is also not possible, at least in the way that Netanyahu, other Israeli officials and pro-Israel groups imagine. BDS's growth, and the nature of its successes, do indeed depend on various factors – most of all, the passion, commitment and strategic clarity of activists across the world. And ironically, it is factors like the brutal actions of Netanyahu's government of right-wing nationalists that have proved to be a particularly potent accelerator.

The attacks on the BDS movement are escalating, not decreasing. But at the same time, the breadth of people, institutions, politicians and social movements supporting BDS, willing to defend its advocates, willing to fight for the right to use non-violent pressure campaigns to end Israeli violations of human rights and international law – those forces are increasing too. So far, despite the efforts of powerful opponents to shrink it out of existence, the BDS movement's space survives. So far, in fact, it's thriving.

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A widening pattern of repression of social movements has taken shape around the world. Everywhere, space for dissent is shrinking rapidly. Governments and corporations alike are working to suppress and silence movements, organisations and individuals who organise against repression. This shrinking of public space threatens virtually all social movements challenging entrenched power structures. Those in power are waging a continual battle to deny dissident movements and civil society more broadly access to the legality, physical safety, public access, and ability to build organisations and institutions, hoping to undermine or short-circuit their campaigns.

This paper examines the legal and political pressure exerted on the Boycott, Divestment and Sanctions (BDS) Movement, a global campaign aimed at pressuring Israel to end human rights violations, launched in 2005 by a group of Palestinian activists.



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