

THE BATTLE OVER *BDS*

**TRENDS, LESSONS &
FUTURE TRAJECTORIES**

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FOREWORD

The campaign to delegitimize Israel's right to exist as the nation-state of the Jewish people is not new. It began with the campaign to convince Britain to refrain from issuing the Balfour Declaration, and later to prevent the adoption of this declaration in the language of the mandate given to Britain in 1922, "To reconstitute a Jewish homeland in Palestine." Even before Israel's founding in 1948, Arab and Islamic countries established an international boycott of the Yishuv (the Jewish presence in the land of Israel).

Since the Durban Conference against Racism in 2001, this campaign has gained momentum and has become identified by the name of one of its major efforts – BDS (Boycott, Divestment, and Sanctions against Israel).

The ultimate goal of BDS is to delegitimize Israel and lead to its demise. It seeks to achieve this goal by building international support for the Palestinian narrative that denies the rights of the Jews as a people in the Land of Israel, thereby eroding international support for its existence as the nation-state of the Jewish people. BDS also seeks to weaken the commitment of the Jews in Israel and the Diaspora to the Zionist narrative.

In the last decade, following the accusatory Goldstone Report in 2009 and the Mavi Marmara flotilla incident in 2010, Israel, Jewish, and non-Jewish organizations around the globe, have started to fight back against BDS. In recent years, they have increased their proactive measures, while the BDS movement intensified its activities as well.

The important question that needs to be carefully examined is: which side's efforts are more effective in moving the needle of delegitimization in Western society, where this battle is being waged? The BDS has gained a stronghold in progressive circles, posing as a human rights movement; it is trying, through emotional materials, grassroots, and political activity, to spread its anti-Israel vocabulary to liberal circles in the West. The pro-Israel campaign, on the other hand, has been working to expose the true nature of BDS to counter its efforts.

Asher Fredman's research looks at this battle and provides us with a deeper

understanding of the efforts undertaken by both sides, and of the trends on the battlefield. While a clear-cut answer to the question regarding the direction of the needle cannot be provided at this point, the research demonstrates that the proactive measures of the pro-Israel network have had a significant impact on the BDS movement. This impact has been manifested, for example, in the growth of counter-BDS legislation and the greater awareness of its antisemitic nature, its real goals, its connection to terror and its methods (the German Bundestag and the Austrian Parliament resolutions defining BDS as antisemitic are probably the most important developments in this context).

At the same time, the research shows that, as an organization engaged in continual learning, BDS continues to adjust its methods of action. It is shifting the focus of its activity today to 'low-hanging fruits' and political bodies, especially municipalities.

Follow-up must continuously be carried out to develop monitoring tools that will enable those who strategize the battle against BDS to make educated decisions as to how best to use their resources.

The writing of this research ended days before the coronavirus crisis has spread over the entire world. Unfortunately even in these dire days, when one expects humanity to come together to fight the disease and while Israel is doing its utmost to help the Palestinians under the PA and under Hamas in Gaza to be able to cope with the challenge, those who try to de-legitimize Israel spew lies and hate towards Israel. This is why there is a need for this paper even as we focus on confronting the virus.

Brig.-Gen. (res.) Yossi Kuperwasser

EXECUTIVE SUMMARY

1. For the first 10 to 15 years after the crystallization of the modern BDS movement at the turn of the 21st century, the global BDS campaign enjoyed a comfortable operating environment. While the counter-BDS community's response to specific challenges was, at times, successful, it largely failed to disrupt the BDS momentum. During this period, and especially following the Goldstone Report and the Mavi Marmara flotilla incident in 2009-2010, the counter-BDS community developed its capacities, built its network, and learned by trial and error.

2. This capacity-building process is coming to fruition. On the one hand, the BDS movement continues to be highly-active, even managing to make headway in certain areas. Yet, it is becoming increasingly clear that **the counter-BDS network is succeeding in disrupting BDS momentum and forcing the BDS movement out of its comfort zone.**

3. Increasingly, the BDS movement finds itself on the defensive. It faces **exposure of its terror-links, credible accusations of anti-Semitism, and national and municipal legislation and resolutions that attack its legitimacy.** The BDS campaign is finding it increasingly difficult to achieve major victories, and even those it achieves are often reversed.

4. Nevertheless, it would be a grave mistake to assume that the battle over BDS is over. The BDS movement has shown itself to be highly adept at pivoting to new strategies, building influential alliances, and identifying emerging opportunities. There continue to be numerous arenas in which it faces little effective resistance.

5. Furthermore, the international environment in which BDS operates has the potential to shift dramatically within a relatively short period toward the creation of more favorable conditions for BDS.

6. Therefore, the counter-BDS campaign must continue to develop the capacities and synergies necessary to meet new and evolving BDS strategies. At the same time, **it must increase its efforts to put BDS on the defensive** and to distance it from mainstream audiences, including those critical of Israel.

7. The following study begins with an analysis of the evolving strategies of both the BDS and counter-BDS networks, as well as of the external factors that may affect the trajectory of the BDS campaign. It then examines two of the primary processes that have put BDS on

the defensive: the exposure of the links between BDS and anti-Semitism, and between BDS and terrorism. It concludes by examining the implications of this analysis for the counter-BDS community.

8. Among the key trends in the international BDS campaign is the increasing importance of the political and governmental arenas. This is true both on the national, subnational (municipal and local), and supranational (EU and UN) levels.

9. The growing significance of the political and governmental arenas in the BDS campaign has numerous implications both for the nature of BDS activity and for the types of capacities, resources, and strategies needed by the counter-BDS community to meet the challenges in these arenas.

10. Municipal and local BDS campaigns, which have already grown in Europe over the last several years, are now evolving in North and South America. Both leading BDS and counter-BDS groups have identified the municipal sphere as a critical arena in the next stage of the BDS campaign.

11. This reality means that an effective response must include **the expanded sharing of knowledge and best practices, particularly between European and North American actors,** improved cooperation among the wide range of groups with local relationships, and enhanced information-gathering regarding potential upcoming challenges on the local level.

12. On the national level, the greatest determining factor as to whether BDS will intensify or recede in a particular country will be the political fortunes and power-sharing arrangements between various political actors (for example, the hard-left wings of the U.S. Democratic Party and the UK Labour Party, Podemos in Spain, and the radical branches of the ANC in South Africa).

13. In the U.S. arena, while headlines related to BDS have often been dominated by battles over Congressional counter-BDS bills and President Trump's Executive Order concerning Title VI of the Civil Rights Act, two key elements are often overlooked. The first is the several pieces of counter-BDS legislation already signed into law by then-President Obama, which contain substantive clauses that could potentially be leveraged.

14. The second is that despite the noisy debates over resolutions explicitly focused on BDS and over the pro-BDS first-term Members of Congress, a more significant challenge is the quiet political lobbying work being done by U.S. and Palestinian BDS groups, together with experienced representatives such as Betty McCollum (D-Minn.). Several key American BDS groups are placing an **increasing emphasis on political lobbying and advocacy, and**

are improving their capabilities and effectiveness. Some of these groups are linked to designated terrorist organizations.

15. South Africa has become a prime example of how the latent tendencies of BDS-violence, threats, anti-Semitism, and support for terror – increasingly find expression when it enjoys a supportive political environment.

16. The EU arena may “heat up” once again and become a central catalyst for BDS after several years of relative quiet. This will be the case if the new EU High Representative for Foreign Affairs and Security Policy, Josep Borrell, seeks to implement an aggressive version of the strategy of “differentiation” and continues or increases EU funding to BDS-promoting groups.

17. The UN Human Rights Council blacklist is being used by the BDS campaign to promote economic boycotts in a wide variety of arenas. A closer examination of the list however reveals that it actually reflects a rejection of many of the BDS movement’s main claims. Despite the UNHRC’s anti-Israel bias, and the extremely broad mandate given to the OHCHR, many of the BDS movement’s primary targets were not included on the blacklist. This would seem to imply that these targeted companies should not be included on the blacklists of any other public or economic body.

18. The counter-BDS community must work to mitigate the effects of the list, including through the **expansion of existing U.S. legislation prohibiting participation in boycotts established by governments.** Given that the blacklist includes U.S. companies employing tens of thousands of Americans, and given that the BDS movement is trying to have additional companies added to the list, the U.S. should make clear that continued UN work on the list will lead to immediate consequences in terms of U.S. funding and cooperation.

19. Steps by International Criminal Court (ICC) Prosecutor Fatou Bensouda to advance an investigation against Israel will be used by the lawfare organizations that make up a key element of the BDS movement to promote legal claims in favor of BDS (although the lawfare implications of an ICC investigation go far beyond BDS). These organizations’ choices regarding priority targets may be impacted by the Prosecutor’s decisions as to which alleged Israeli actions to focus on most extensively (i.e., its military actions in Gaza, its activities in the West Bank).

20. The BDS movement must generate a constant stream of “victories” for both internal and external consumption. **As a result, it has adopted a pragmatic strategy of focusing on “low-hanging fruit,”** particularly in the economic arena.

21. Therefore, a key predictor as to which companies will be targeted and prioritized is whether **there is already a non-related (i.e., non-Israel focused) divestment campaign underway**, onto which the BDS movement can piggy-back (a prime example are companies targeted for divestment due to their involvement in the production of cluster munitions.)

22. Another critical predictor is whether a company has already shown itself to be susceptible to BDS pressure by partially conceding to BDS demands or attempting to engage BDS activists in dialogue (or is in a sector in which another company has already shown itself vulnerable to such pressure.)

23. Experience indicates that corporate attempts to appease or engage the BDS movement generally lead only to an intensification of the BDS campaign, while a policy of ignoring BDS tends to lead the BDS movement to prioritize “softer” targets.

24. To meet the demand for a constant flow of “successes,” the BDS movement is willing to **manufacture and advertise artificial victories.**

25. In some cases, where it appears that it will be difficult to convince consumers to actually boycott a targeted company, **the BDS movement lowers the bar by advocating “BDS virtue signaling”** rather than actual boycotting.

26. Despite its opposition in principle to “settlement boycotts,” the BDS movement tends to focus on such boycotts because of their ability to attract broader audiences. At the same time, the BDS movement seeks to expand and blur the boundaries of what is considered “settlement-related activities,” **in order to advance campaigns couched in the language of settlement boycotts but aimed at undermining Israel’s economy as a whole.** The campaign against Israeli banks is a prime example of this strategy.

27. When BDS lobbying and advocacy efforts fail to produce results, BDS organizations will often employ **bullying and threats or more indirect methods such as proposing the adoption of general investment screens.**

28. While public debates over BDS anti-Semitism continue, two points should be clear. The first is that **hallmarks of the BDS movement’s ideology and rhetoric meet the most-widely accepted international definition of anti-Semitism-** the International Holocaust Remembrance Alliance (IHRA) Working Definition. There is no doubt that BDS denies the Jewish people’s right to self-determination in any borders, characterizes Israel as an inherently racist, “apartheid” endeavor, applies double standards to Israel, and compares Israeli policy to that of the Nazis.

29. The second point that should be clear is that prominent BDS figures and organizations in numerous countries **have repeatedly crossed the line to blatant anti-Semitism,** and that

anti-Zionist activity has repeatedly degenerated into threats and violence against Jews. Examples abound.

30. More and more **parliaments and political leaders have recognized the anti-Semitic nature** of the BDS movement. Most prominent among these are the resolutions of the German Bundestag (May 2019) and the Austrian Parliament (February 2020). For example, the Bundestag's resolution condemning BDS declared that, "the argumentation patterns and methods used by the BDS movement are anti-Semitic."

31. The manifold connections between the BDS movement and designated terrorist organizations have begun to be revealed. The research regarding these links is being used by the counter-BDS community primarily in the financial sphere (e.g., closure of BDS-affiliated bank accounts.) The counter-BDS community should increase its engagement on this issue with **municipal and state policy-makers, national and local law enforcement bodies, and tax and charity agencies.**

32. Expanded efforts should be made **to convince additional countries to follow the precedents set by the EU and Germany** in preventing terror-affiliated BDS leaders (particularly non-citizens) from using parliaments and public facilities to spread anti-Israel delegitimization. The tax-exempt status of BDS movement-linked organizations should also be examined.

33. In light of the exposure of these terror connections, it is imperative to engage in coordinated action to press all governments, municipalities, EU, and UN bodies to **cease funding, directly or indirectly, to terror-affiliated NGOs.** This includes insisting that the EU and European countries enforce conditions in funding agreements which prevent recipients from working with designated terrorist organizations. It is particularly important to engage in outreach on this issue to taxpayers in countries providing such funding.

34. It appears that the Palestinian NGO Network (PNGO) was and may still be a significant provider of resources to the Palestinian BDS National Committee coalition (BNC). **In fact, there are indications that the BNC, on an administrative level, is essentially a project of the PNGO.** The PNGO has received funding from Western governments and foundations, mainly through the NGO Development Center (NDC). There are indications that an additional source of funding for the BNC comes or came from the **Palestinian philanthropists associated with the "Welfare Association."**

35. Given the presence of the Palestinian National and Islamic Forces (PNIF) coalition and its five designated terror organizations on the BNC Steering Committee, it follows that those providing or facilitating the transfer of funds to the BNC and PACBI **must be concerned that they are wittingly or unwittingly in violation of anti-terrorism financing regulations.**

36. As a result of the growing identification of the BNC with terror, it is likely that **the BNC will increasingly use the PACBI label for fundraising in the West, or as the organizational affiliation of its activists.** It is essential to highlight the fact that there is no substantial difference between the BNC and PACBI, particularly on the administrative level.

37. **A rise in the intensity of military conflicts and the destabilization of the security situation are also central predictors of an increase in the intensity of BDS campaigns.** This must be taken into account by the counter-BDS community given the possibility of a multi-front war against Iranian proxies, or a deterioration of the security situation in the post-Abbas era. If the counter-BDS community wishes to combat BDS-promoted narratives effectively in the event of such scenarios, it must invest in the **public diplomacy “battle between battles”** during periods of relative calm.

38. Increasingly effective action by the counter-BDS community, including improved cooperation between key actors, and the enhanced activity of the Israeli government,¹ has prevented the BDS movement from evolving into a more significant strategic threat. **However, it still retains the potential to evolve into such a threat.**

39. Therefore, despite recent successes in the counter-BDS campaign, it would be a grave mistake on the part of the counter-BDS community to pull back and cease investing sufficient resources. New challenges will require **an even higher degree of coordination, as well as investment in developing critical capacities, research capabilities, and relationships.**

40. It must be recalled that for the BDS movement, improving the positioning of its principles in the Overton window of discourse (the range of acceptable positions or options) has always been as important as the tangible aims of the various boycott campaigns. The counter-BDS community must, therefore, invest not only in exposing the true nature of BDS, but **in developing a positive narrative on Israel and Zionism, inspiring Israel’s supporters, and building new alliances.**

41. If the counter-BDS community continues to work strategically and synergistically, **it is likely that BDS, while not disappearing, will be able to be successfully contained.**

¹ In October 2015, Israel’s Security Cabinet gave Minister of Strategic Affairs Gilad Erdan overall responsibility for leading Israel’s fight against BDS and delegitimization.

Introduction

The BDS (Boycott, Divestment, and Sanctions) campaign against Israel is rapidly evolving. As a network-like movement with a decentralized structure, the BDS campaign can rapidly adapt and adjust course in response to three interrelated stimuli:

1. Changes in the external operating environment.
2. The actions of the counter-BDS community.
3. Internal developments among its principal components.

While there continues to be a lively debate regarding BDS, much of the discourse tends to be polemical rather than analytical. There is a dearth of publically available, up-to-date analyses of global BDS trends. This work comes to fill that gap.

While this study aims to be one of the most comprehensive analyses of BDS published to date, an examination of BDS activity in all relevant countries and spheres is beyond its scope. Instead, the study highlights key developments and trends across arenas. In addition to analyzing these trends, this work aims to identify potential predictors of future BDS trends.

Understanding current trends is necessary to enable the counter-BDS community to accurately evaluate its own performance, develop effective strategies for meeting BDS challenges in the present, and prepare appropriately for the challenges on the horizon. Such preparation requires strategic resource allocation and capacity building, enhanced coordination and best practice sharing, and skillful pivoting when current approaches underperform.

This study concludes that for the first time, the BDS campaign is on the defensive. During the first ten to fifteen years after the crystallization of the modern BDS campaign at the turn of the 21st century, BDS enjoyed a comfortable operating environment. It was, for the most part, successful in staying one step ahead of the counter-BDS community.

While there were some in the pro-Israel network and Israeli government who recognized the threat of BDS in its early stages, the counter-BDS community as a whole required time to both properly analyze the BDS challenge and to develop effective strategies in response. During this time, the counter-BDS community was able to thwart numerous BDS initiatives, yet was largely unable to disrupt BDS momentum.

Over the last several years, and particularly since 2018, it is becoming increasingly clear that the capacity building processes undertaken by the counter-BDS community are coming to fruition. This, in turn, is leading to a significant increase in the effectiveness of the counter-BDS campaign. Revelations regarding BDS movement connections to terror and anti-Semitism, a growing understanding among policymakers of its true goals, and the

scaling of effective counter-BDS strategies have pushed BDS out of its comfort zone and led to the beginnings of a roll-back.

Yet, at the same time, it must be recognized that the BDS movement has already succeeded in impacting the progressive discourse on Israel, built coalitions with influential actors, and developed effective methods for directing pressure at its targets. Given BDS' proven ability to adapt to changing circumstances and swiftly adopt new strategies, it still retains the potential for expanding its reach and impact. If not continuously and effectively countered, it still has the potential to transform into a strategic threat to Israel (although it does not constitute such a threat today).

Furthermore, this study shows that in the event of the alignment of several external developments, such a transformation could take place relatively quickly, barring an effective response.

However, if the counter-BDS community continues to invest resources, improve synergies, refine strategies, and scale best practices, BDS can be reduced to manageable levels. Like terror, BDS is an ideology that can never be eliminated entirely. But addressed in a sophisticated and consistent manner, its impact on the State of Israel can be weakened and contained.

A Note on Terminology

A note on the terminology used in this report - The phrase "BDS movement" is used to signify the personalities, organizations, and campaigns closely affiliated with the Palestinian BDS National Committee (BNC)² and the Palestinian BDS leadership.

The phrase "BDS campaign" is used to signify the broader set of campaigns to impose boycotts, divestment, and/or sanctions against Israel, as well as against entities and individuals connected to the Jewish state. This campaign is diverse and encompasses a broad range of actors, initiatives, and modes of operation.

The phrase "counter-BDS community" (or network) refers to those working to oppose the BDS campaign. This broad term is employed because those seeking to counter BDS include both those that could be described as "pro-Israel" and those who oppose BDS not out of support for Israel, but due to philosophical, legal, or moral objections to the campaign.³

2 The Palestinian BDS National Committee (BNC) is a coalition of NGOs, activists, and terror-affiliated groups, based primarily in Ramallah, which serves as the self-appointed leadership of the BDS movement. It acts as a coordinating body, thought-leader, and symbolic "authentic" reference point for numerous BDS organizations around the world. While it presents itself as "the largest coalition in Palestinian civil society," a closer examination of its members and actual influence within Palestinian society reveals the elaborate "astroturfing" exercise at its core. Such an examination, however, is beyond the scope of the present work.

3 There are, of course, additional categories in the spectrum of attitudes towards BDS. For example, there are those, like J Street, that claim to be opposed to the "BDS movement," but which do not oppose other forms of boycott initiatives against Israel, particularly those that allegedly target only entities with connections to activity over the Green Line (an approach now being exploited by leading BDS actors, as will be discussed in this study.)

International BDS Trends



The Political & Governmental Arenas

The first BDS-related trend which should be highlighted is the growing importance of the governmental and political arenas.

The BDS campaign and counter-campaign are increasingly taking place in the governmental and political arenas across all of their constituent parts. This is true on both the horizontal plane – i.e., the executive, legislative, and judicial branches- as well as on the vertical plane – i.e., from international governmental bodies to national governments to state and municipal governments.



Rally for Equal Rights at the United Nations Human Rights Council - Protest Against Anti-Israel Bias at the UN. March 2019, Geneva, Switzerland - Picture from UN Watch

In all of these arenas, political actors play a crucial role in determining policies and positions. Therefore, as these arenas become increasingly central in the battle over BDS, the identity of (and power relationships between) political actors is becoming one of the most important factors in determining outcomes.

In addition, the legal arena is becoming increasingly important, as BDS and counter-BDS actors mount legal challenges to decisions taken or not taken by governmental bodies.

Since governmental bodies represent a constituency, whether local, national, or supranational – activity in the governmental and political arenas has the potential for creating a substantial impact on both the symbolic and practical levels. For example, a governmental decision equating BDS with anti-Semitism or declaring an area “Free of Israel Apartheid” (BDS language for free of Israeli products) has important symbolic and educational effects for the constituency.

In addition to symbolic impact, steps to counter or support boycotts by governmental actors can have far-reaching practical consequences as well. This was demonstrated, for example, by the impact of U.S. states’ counter-BDS legislation on Airbnb’s reversal of its decision to delist Jewish properties in Judea and Samaria in April 2019. Similarly, a UN-produced blacklist of companies with connections to activity over the Green Line could have wide-ranging effects across numerous national constituencies.

This study will begin with an examination of the growing importance of the municipal and local governmental arena. It will then examine BDS trends in national and supranational governmental bodies.

Municipal-Level BDS

Since 2014, there has been a substantial growth of both BDS and counter-BDS activity in local councils, municipalities, and states. The attractiveness of this arena lies in the ability to utilize local relationships to advance such action, the relative speed with which such activity can be advanced (as opposed to the more cumbersome processes on the national level), its educational and practical impact on the local constituency, and the ability of such resolutions to create precedents that are then replicated in other localities.

Sub-national BDS campaigns have demonstrated a significant degree of international mobility, as strategies, tactics, and resources developed in one region are shared with and adapted by actors operating in other areas. This is a strong indication of the network-like properties of both the BDS campaign and increasingly of the counter-campaign against BDS.

The strategy of municipal BDS received a major boost at a UN-sponsored BDS conference, which took place in Seville, Spain from December 2-3, 2014.⁴ The conference, entitled “The International Conference of Local Governments and Civil Society Organizations in Support of Palestinian Rights,” was co-sponsored by the UN, the “United Cities and Local Governments” umbrella organization, and local Spanish governments and councils. It brought together leaders from some of the most significant BDS organizations around the world – the BNC, the Brussels-based European Coordination of Committees and Associations for Palestine (ECCP), the U.S. Campaign to End the Israeli Occupation (which later renamed itself the U.S. Campaign for Palestinian Rights or USCPR), and the Spanish RESCOP. Representatives of the UN, PLO, PA, and local Spanish governments also took part.

The conference’s concluding declaration called for:

International, European, and national institutions to reinforce the diplomacy of the cities; Local governments to commit themselves to responsible investment by not contracting with parties...that support or benefit from occupation or violate related prohibitions under international law; Civil society to pressure their local and national governments to hold to account Israel and companies that are complicit with its violations.

The BNC, which played an important role at the UN-sponsored conference, has since noted the importance of the local government arena on its official website, explaining:

Local government bodies such as municipal and regional councils play an important role in our political system. Dozens of local authorities...have passed resolutions that support BDS or that pledge not to deal with specific companies targeted by the BDS movement. These decisions are powerful displays of solidarity with the Palestinian struggle for freedom, justice, and equality.⁵

The municipal boycott campaign has gained the most traction to date in **Spain**, driven particularly by the radical left-wing Podemos party, formed in 2014. Podemos, linked to former Venezuelan President Hugo Chavez and Iran, has built coalitions with other communist, socialist, and separatist groups to advance resolutions against Israel. More than 100 municipalities and provincial parliaments in Spain have adopted resolutions declaring themselves “Free of Israel Apartheid” (the so-called “ELAI” campaign) and in support of BDS.

4 <https://www.un.org/unispal/document/auto-insert-193521/>

5 <https://bdsmovement.net/local-governments>



STATEMENT: as a result of the coercion and violent intimidation carried out by a group of anti-Semitic extremists in a public conference in Madrid

ACOM's website screenshot, article from December, 2019

Pro-Israel and human rights organizations, most prominently *Acción y Comunicación en Oriente Medio* (ACOM), have mounted successful legal campaigns to challenge these municipal boycotts. These groups have achieved more than 40 victories in their counter-BDS legal campaign, in some cases successfully petitioning courts to annul the boycott resolutions, and in others, convincing municipalities to annul or freeze their resolutions.

The legal claims against the Spanish municipal boycotts have focused on violations to constitutionally guaranteed civil rights, as well as on the discrimination inherent in the boycott resolutions. For example, Spanish courts have found that the municipal boycotts violate Section 14 of the Spanish constitution, which declares that Spaniards are equal before the law, and forbids discrimination "on account of birth, race, sex, religion, opinion, or any other personal or social condition or circumstance;" Section 16, which guarantees "freedom of ideology, religion, and worship;" and Section 20, which protects the right to freedom of expression and academic freedom. ACOM is now bringing criminal charges against BDS advocates, such as BDS Pais Valencia and Omar Barghouti,⁶ involved in promoting such illegal discrimination.

Given the numerous legal victories over municipal BDS in Spain, it appears likely that local Podemos linked actors will increasingly shift their focus to promoting the ELAI campaign within public, semi-public and civil society institutions, rather than municipalities. They will also likely focus on taking advantage of Podemos' position in the national government to shape Spain's policies regarding the Palestinians, and to obtain governmental and municipal funding – see discussion of the national level below.

United Kingdom - At times, national governments oppose attempts by local councils to adopt anti-Israel boycotts, either because they oppose the substance of such boycotts, or because they oppose local councils taking steps that affect foreign policy and broader societal goals. This has been the case in the UK.

Several local UK councils adopted BDS motions, which were then challenged in the courts. In its ruling in the challenge brought by the Jewish Human Rights Watch organization against the Leicester City Council, the court took a bifurcated approach. It upheld the right of local councils to adopt boycott resolutions by ruling that the "declarative" part of the council could pass resolutions supporting a boycott, as long as the

6 The co-founder and today, the de facto leader of the BNC and PACBI.

“executive” part of the council did not actually implement them. Boycott resolutions were lawful as long as they were only symbolic.

The UK Government, which has been strongly opposed to BDS, intervened in the municipal BDS campaign by issuing two pieces of legislation and guidance aimed at countering municipal-level boycotts not in line with UK foreign policy. In February 2016, the UK Government issued a Procurement Policy Note on “ensuring compliance with wider international obligations when letting public contracts.” The note states that:

Public procurement should never be used as a tool to boycott tenders from suppliers based in other countries, except where formal legal sanctions, embargoes, and restrictions have been put in place by the UK Government. There are wider national and international consequences from imposing such local level boycotts. They can damage integration and community cohesion within the United Kingdom, hinder Britain’s export trade, and harm foreign relations to the detriment of Britain’s economic and international security. As highlighted earlier, it can also be unlawful and lead to severe penalties against the contracting authority and the Government.

The government press release on the Procurement Note explained that “Town hall boycotts undermine good community relations, poisoning and polarizing debate, weakening integration and fueling anti-Semitism.” It also noted that such boycotts could violate World Trade Organization (WTO) procurement rules.

In November 2015, the UK Government took steps to prevent local government bodies from using their pension funds to pursue boycotts that run counter to the UK foreign or defense policy. The government undertook a public consultation on updating Local Government Pension Scheme regulations, which included, inter alia, the statement:

The Secretary of State has made clear that using pensions and procurement policies to pursue boycotts, divestments and sanctions against foreign nations and the UK defence industry are inappropriate, other than where formal legal sanctions, embargoes, and restrictions have been put in place by the Government.

The Secretary of State has said, ‘Divisive policies undermine good community relations, and harm the economic security of families by pushing up council tax. We need to challenge and prevent the politics of division.’⁷

BDS groups launched a campaign to push back against the proposed changes to the local government pension regulations. However, in the Government response to the Consultation, published in September 2016, the Government stated:

[It] remains committed to the policy set out in November’s consultation paper that administering authorities should not pursue investment policies against foreign nations and UK defence industries, other than where formal legal sanctions, embargoes and restrictions have been put in place by the Government.⁸

The Palestine Solidarity Committee (PSC), one of the most active and influential UK BDS groups (which counts Jeremy Corbyn among its patrons), launched a legal challenge to the Local Government Pension Scheme guidance. In 2018, the Court of Appeals upheld the government’s policy and ruled that the government had acted within its authority in issuing the guidance. However, in January 2019, the PSC was granted the right to appeal the judgment to the UK Supreme Court.

7 https://assets.publishing.service.gov.uk/uploads/system/uploads/attachment_data/file/479642/Consultation_on_investment_reform.pdf

8 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/555690/Government_response_to_2016_consultation.pdf

While UK councils have played a role in advancing BDS, they have also played an important role in the counter-BDS campaign. To date, over 180 UK local councils have adopted the International Holocaust Remembrance Alliance (IHRA) anti-Semitism definition, with nearly all of them adopting the accompanying IHRA illustrative examples of anti-Semitism as well. These examples include positions and actions that are core components of the BDS movement, such as “denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor,” and “applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.”⁹ (The IHRA definition and examples will be discussed more fully in the section below on BDS anti-Semitism.)

In **Northern Ireland**, in the City of Belfast, the consideration of a BDS resolution was frozen, following a preemptive approach to the Council by UK Lawyers for Israel (UKLFI). UKLFI noted numerous legal and procedural problems with the proposed motion. The city solicitor for the Belfast City Council wrote to UKLFI saying:

I do accept [that the Council] is not entitled to adopt a position which would affect its ability to enter into contractual relations with Israeli Nationals or commercial organisations of Israeli origin or otherwise associated with Israel.¹⁰

In 2018, several **Irish** city councils adopted some form of BDS-affirming resolutions, including, in April 2018, the City of Dublin. Pro-Israel organizations, including Irish4Israel and UKLFI, intervened, leading to a declaration by the Chief Executive of the Dublin City Council that:

Legal responsibility for all procurement by Dublin City Council rests with me as Chief Executive and not with the Elected Members of the Council. In exercising this responsibility, I am bound to have regards to national and EU procurement law. In view of this, I will not be implementing a procurement boycott of Hewlett-Packard or of any other entity...as to do so would mean acting in breach of national and EU procurement law.¹¹

In **Germany**, a number of leading states and cities, including the cities of Frankfurt, Hamburg, and Berlin, passed decisions against allowing public resources to be used for BDS-promoting events. These resolutions led to BDS activities and organizations being denied the use of public facilities, and to the cancelation of prizes given by municipal bodies, once it became known that their recipients were BDS supporters. (In other cases, the city withdrew its support for the prize, but the prize was still awarded by other bodies.)

These municipal decisions are now facing legal challenges, with BDS protagonists arguing that the anti-BDS decisions are political resolutions rather than legal acts, and violate rights guaranteed by German and European law.¹²

9 <https://www.holocaustremembrance.com/working-definition-antisemitism>

10 Among the reasons cited by UKLFI in its letter to the Belfast City Council were:

a. A boycott by the Council of Israeli products or services would breach EU and WTO public procurement rules.
b. A boycott by the Council of Israeli products or services would infringe on Article 19 of the Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992, which requires councils to select suppliers without reference to non-commercial matters.
c. A boycott may also breach section 75(2) of the Northern Ireland Act 1998, which requires a public authority to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
d. Implementation of the motion may involve discrimination on the ground of religious belief or political opinion.
See <http://www.uklfi.com/bds-motion-at-belfast-city-council-withdrawn> for further details related to the Belfast case.

11 <http://www.uklfi.com/dublin-councils-chief-executive-nixes-israel-and-hewlett-packard-boycott>

12 For example, the German-Palestinian Women’s Association, which supports BDS, sued the City of Bonn for excluding them from a cultural festival. In September 2019, the Court of Cologne ruled that: “The motions of the Bonn City Council [against BDS], as well as the motions of the parliament of North-Rhine Westphalia (20 September 2018) and the German Bundestag (17 May 2019), don’t constitute legislative acts, but are political resolutions or expressions of political will. These motions alone cannot justify, from any legal perspective, the restriction of an existing legal right.” See <https://rightsforum.org/2.0/wp-content/uploads/2019/09/2019-09-16-ELSC-Press-release-Bonn-ENGDE.pdf>.

The counter-BDS community in Germany, including the officials and political parties opposing BDS, will now need to decide how best to address these legal objections and solidify counter-BDS measures (particularly those related to halting direct and indirect local government funding to BDS-supporting organizations.)

The German Bundestag cross-party resolution from May 2019, affirming that the arguments and methods of the BDS campaign are anti-Semitic, incorporated elements of the reasoning behind the municipal resolutions, and adopted their opposition to the use of governmental resources for BDS. The Bundestag resolution called:

Not to provide rooms and institutions, which are under the authority of the parliament administration, to organizations which make anti-Semitic statements or question Israel's right to exist. The German parliament urges the Federal Government, not to support any events of the BDS movement or of groups which actively support their goals.

Norway – In October 2019, the BDS movement issued a press release declaring that, “Norway’s capital Oslo is banning Israeli settlement goods and services.”¹³ This headline was quickly picked up by a number of news outlets. The story was based on a line in the “platform for city council cooperation between the Labor Party, Green Party and Socialist Left Party in Oslo 2019-2023,” which commits to:

Investigate the scope of action in the procurement regulations to not trade goods and services produced on territory occupied in violation of international law by companies operating under the permission of the occupying power.¹⁴

It appears, however, that despite the headline given by the BDS movement, and statements by BDS-supporting politicians on the Oslo City Council, the Council undertook only to “investigate the scope of action in the procurement regulations” available to implement such a ban. It seems that the Council realized, like a number of its counterparts in other parts of Europe, that such a ban could be a violation of WTO and EU procurement rules, and therefore, could not be implemented.

In **France**, strict anti-discrimination laws¹⁵ (which prohibit inter alia, discrimination based on national origin) have created a strongly unfavorable environment for governmental BDS activity. France’s judicial system, including its High Court, has upheld legal rulings against BDS activists for illegal discrimination. France’s leaders from all the main political parties have consistently condemned BDS and anti-Zionism.¹⁶

As a result, with the exception of a handful of cases in which local councils expressed support for BDS without actually adopting BDS measures, governmental and political-level BDS has been limited. Jewish and pro-Israel groups are now working to convince local councils to adopt resolutions against anti-Semitism in all its forms, including that expressed as anti-Zionism. The more sophisticated BDS actors in France are investing their energies, and considerable resources, not in the governmental arena but in campaigns targeting major corporations and financial institutions (see the section on the economic BDS campaign below).

Chile – In June 2018, Valdivia, a city in southern Chile, adopted a resolution declaring it to be the first city in Latin America “free of Israeli Apartheid,” thereby adopting the Spanish model of BDS resolutions.

Pro-Israel groups in Chile, with the assistance of ACOM, challenged the resolution, arguing that the ban violated equality before the law and constituted discrimination in economic matters.

In December 2018, the Chilean National Comptroller decided that municipalities could not adopt anti-Israel boycotts, reasoning that anyone participating in a government bidding process is legally ensured “equal and non-discriminatory treatment” under Chilean law. The Comptroller reasoned that Chilean law prohibits “arbitrary discrimination that is based on considerations such as nationality and that cause a

13 <https://bdsmovement.net/news/norways-capital-oslo-banning-israeli-settlement-goods-and-services>

14 https://res.cloudinary.com/arbeiderpartiet/image/upload/v1/iev_v_filestore/353d9b645fd74641bbe2cc685606903a541170f97d804e4188d599765f0e2d43_p.22

15 Most prominently the “Lellouche” law.

16 Some in the French counter-BDS community have been critical at a perceived lack of translation of these condemnations into concrete acts against BDS activities.



BDS activists and pro-Israel supporters protest on US campus during Operation Pillar of Defense, November 2012

deprivation, disturbance, or threat of the exercise in fundamental rights.” He also wrote that municipalities do not have the legal authority to conduct foreign relations.¹⁷

In the **United States**, the majority of U.S. states have now passed legislation or issued executive orders against BDS, primarily prohibiting state investments in, and/or contracting with, entities that adopt BDS.

In response, the BDS network expanded its legal activity through organizations such as ‘Palestine Legal’. Palestine Legal, together with allies such as the American Civil Liberties Union (ACLU), Center for Constitutional Rights (CCR), and Council on American-Islamic Relations (CAIR), have challenged some of these pieces of state legislation in court. This, in turn, has led to the legislation being amended to address the relevant legal issues. For example, in Kansas, after the State’s counter-BDS legislation was amended (by specifying that it would not apply to individuals and that it would apply only to contracts over 100,000 dollars), the ACLU withdrew its lawsuit (while still opposing the law in principle). It appears that the ACLU believed that the amended legislation would withstand legal scrutiny.

At the same time, BDS activists have been increasingly targeting local councils, pressing them to adopt BDS demands. Particularly prominent has been the “Deadly Exchange” campaign, led by the “Jewish Voice for Peace” (JVP) BDS organization, which seeks to end joint programs between American and Israeli law enforcement. The JVP campaign is based on the tenuous argument that these joint programs, and particularly educational visits to Israel on the part of delegations of U.S. law enforcement officials, somehow contribute to alleged police violence and even “deportations” (the goal being to tie the campaign to protests against President Trump’s border policies and police practices towards minority communities, using the banner of intersectionality).¹⁸

17 <https://www.jpost.com/BDS-THREAT/BDS-declared-illegal-for-all-cities-in-Chile-573723>

18 The Deadly Exchange campaign is a prime example of attempts by BDS organizations to build coalitions and recruit other societal groups to their cause, by seeking to connect BDS to campaigns against police racism, incarceration of minorities, and deportation of immigrants. At times, BDS activists use the theory of intersectionality as a framework for solidarity with other minority groups. For example, an August 2019 BDS movement statement declares:

“The struggle for Palestinian rights, including through BDS, is intersectional. We follow in the footsteps of Palestinian feminists who have insisted that the struggle for social and women’s rights and emancipation is integral to the Palestinian liberation struggle...We know well that our struggle is inseparable from that of refugees, migrants, Blacks, Muslims, indigenous nations and the LGBTQI communities around the world. The movement for climate justice is integral to all our struggles.”

At other times, BDS groups simply assert that boycotting Israel must be included among the checklist of causes supported by all “authentic” progressives.

See <https://www.bdsmovement.net/news/bds-condemns-antisemitic-fascist-forces-germany-and-worldwide>

While the Deadly Exchange campaign has made some small claims of success, these have largely been exaggerations. It appears that the decisive factor in determining the outcomes of municipal campaigns is the degree to which counter-BDS organizations can identify and organize to stop the initiative ahead of time. In general, when local relationships (and inter-organizational cooperation) enable timely identification and intervention, these campaigns can be prevented or substantially limited. When this is not the case, local and national counter-BDS groups are forced to organize after the fact (and usually after the headlines proclaiming a BDS achievement). While they are often successful in rolling back the BDS-promoted decision, BDS organizations are still able to claim victory.

In some cases, BDS organizations “disguise” their resolutions, such that not all members of a local council realize that their vote for a specific proposal will be presented after the fact as an endorsement of BDS (or at least giving them plausible deniability that they knew that this would be the case).

The January 2018 resolution of the New Orleans City Council is a good example of these patterns and, therefore, bears a more detailed examination.

In 2017, BDS campaigners tried to get the New Orleans City Council to adopt an explicitly pro-BDS resolution. The Council instead, on January 11, 2018, adopted a broad resolution on human rights, which did not mention Israel or the Middle East. It appears that at least some of the Council members were either unaware of how the resolution would be portrayed or believed that by issuing such a general declaration, they could sidestep the issue of BDS.¹⁹

The resolution stated, in part:

Whereas, consistent with its responsibilities to its residents, the City of New Orleans has social and ethical obligations to take steps to avoid contracting with or investing in corporations whose practices consistently violate human rights, civil rights, or labor rights. Be it resolved that the City Council encourages the creation of a process to review direct investments and contracts for inclusion on, or removal from, the City’s list of corporate securities and contractual partners, according to the values of the City as referenced in this Resolution.

Whatever the expectations or intent of the city council members, the resolution was immediately described by BDS organizations and mainstream media outlets as a “major” BDS success.²⁰

It appears that the local counter-BDS community, and particularly the Jewish Federation of Greater New Orleans, was caught by surprise. In a press release, the Jewish Federation expressed its “deep disappointment” in the resolution and objected that:

In a patently undemocratic and unfair procedural move, today’s resolution was passed without any public knowledge, six hours into the Council’s session and after the suspension of rules to add this untimely resolution to the agenda, and without the opportunity for dissenting voices to be heard for a broader discussion. These stealth tactics divide communities and do not provide for an equitable forum whereby all voices can be heard.

The Jewish Federation also noted that while it:

Fully supports the values of human rights expressed in the resolution, we are deeply concerned

19 Several of the resolution’s key proponents claimed afterwards that they had been unaware of the involvement of the BDS campaign. However, it should be noted that the Council’s PR firm put out a release after the resolution was passed stating that it was in accordance with the movement to boycott Israel. https://www.nola.com/news/article_a9bf2d87-87b8-5bdc-a6c2-0a598bd58eb8.html

20 See examples at <http://proisraelbaybloggers.blogspot.com/2018/01/new-orleans-city-council-refuses-to.html>



Rally for Equal Rights at the United Nations Human Rights Council - Protest Against Anti-Israel Bias at the UN. March 2019, Geneva, Switzerland - Picture from UN Watch

about its unintended consequences relating to Israel and in bolstering the divisive BDS movement. The BDS movement, which has inherently anti-Semitic components, is designed to challenge Israel's economic viability and very right to exist.

The Jewish Federation stated that it looked forward to:

Working with the current Council, the newly-elected Council Members, the Mayor-elect, and the public to address these concerns, to further educate our civic leaders, to ensure all voices are heard, and to avoid a potential chilling effect on both discourse and the growth and economic development of the greater New Orleans area.

Indeed, the local counter-BDS community, with support from national organizations like the Jewish Federations of North America (JFNA), swung into action. Local community leaders engaged with the council members to highlight the nature and goals of BDS and the manner in which the seemingly-innocuous resolution was being portrayed by the BDS campaign.

Two weeks later, on January 25th, the City Council chose to rescind the resolution by a vote of 7-0. According to a local New Orleans paper, "The New Orleans City Council backpedaled Thursday, citing a misunderstanding of the deep divisions that surround a movement to boycott the state of Israel and a flawed approval process."²¹

Council President Jason Williams, who initially voted for the measure, explained his support for its rescission by noting, "We are not going to solve the Middle East crisis in the city of New Orleans today."

According to the local paper:

Williams and Mayor-elect LaToya Cantrell — who authored the resolution — reiterated why they had agreed to reconsider it, saying they had not understood how it would be construed locally and around the world.

Mayor-elect LaToya Cantrell issued a statement declaring:

While I will continue to examine issues of civil rights and fair contracting, I want to unequivocally

reiterate that I am neither supportive of the BDS movement nor in any way hostile to the Jewish community or the State of Israel. Nor was it my intention to commit the City of New Orleans to such positions.²²

According to both leading BDS and counter-BDS actors, the municipal or sub-national arena is set to become an increasingly important forum for the fight over BDS. For example, in its 2018 Annual Report, the U.S. Campaign for Palestinian Rights (USCPR), perhaps the most sophisticated U.S. BDS organization focused on the political sphere, announced that its “forward-looking strategic plan pinpoints municipal campaigns as a priority area to build on and out.”

To advance this priority area, the USCPR launched a dedicated campaign platform, entitled “Cities for Palestine.” This platform explains that:

Municipal campaigns focus on engaging directly with policymakers. This work reverberates to help move decision-makers at local, state, and federal levels, and ultimately, we move closer and closer to changing the U.S. policies that enable Israel’s denial of Palestinian rights.²³

It bears noting that the USCPR is closely connected both to the BNC²⁴ as well as to “Al-Shabaka, The Palestinian Policy Network,” which serves as a central forum for discussions by BDS movement thought-leaders on trends in the movement.²⁵

The JFNA’s Israel Action Network (IAN), set up by the Jewish Federations as a central vehicle for the U.S. Jewish community’s efforts to combat BDS, has also noted the growing centrality of the municipal arena. Its 2018 Annual Report notes, “We will also continue our efforts with state legislatures and increase our work with city councils and in other spaces where we anticipate an escalation of BDS activity.”²⁶ Its 2019 Report noted, “We are the primary organization helping communities fight municipal BDS, an area in which there has been a marked increase in activity...IAN worked with 40+ Federations to proactively build and strengthen relationships with mayors and city council members to stop municipal BDS efforts.”²⁷

22 <https://www.timesofisrael.com/new-orleans-rescinds-bds-backed-measure-following-criticism/>

23 <https://www.citiesforpalestine.org/theissues>

24 For example, the BNC is listed as one of the organizers of the USCPR’s “Cities for Palestine” campaign, and Omar Barghouti’s brother, Nasser Barghouti, served as treasurer of the USCPR, according to the group’s 2017 IRS 990 form.

25 For example, Nadia Hijab, co-founder and board president of Al-Shabaka, who also served as its Executive Director from 2011-2018, is a co-founder and former co-chair of the USCPR and now serves on its advisory board.

26 Available at <https://cdn.fedweb.org/fed-118/2/IAN%2520AR18FinalSpreads-2.pdf>

27 https://cdn.fedweb.org/fed-118/2/IAN%2520AR19spreads_Final_For_Digital.pdf?v=1569247152

Summary- Primary Arguments Used to Counter Municipal Boycotts:

From the preceding analysis, it can be seen that the primary arguments used to counter municipal campaigns relate to:

- 1. Violations of constitutional and legal rights, particularly those of equality, non-discrimination, and freedom of expression and religion.**
- 2. World Trade Organization and EU commercial and procurement regulations.**
- 3. Broader societal goals relating to preventing anti-Semitism and inter-group tensions.**
- 4. Support for Israel and the benefits of the relationship with Israel.**
- 5. Opposition to the adoption of independent foreign policies on the part of sub-national actors.**

Given the high mobility of such campaigns both nationally and internationally, the relatively short timeframes in which they evolve and the critical role played by local relationships in their development, inter-organizational cooperation is particularly important to effective counter-BDS action in this arena.

National-Level BDS

While municipal campaigns continue to spread and evolve, it is still pro- and counter- BDS campaigns on the national level, which generate the most attention and have the broadest potential impact.

In some cases, as we saw in the UK and as we will see in the case of the U.S. Congress, national BDS-related legislation and policies are aimed at influencing the BDS battles taking place on the sub-national level.

United States

Intensive public debates regarding BDS have repeatedly erupted in the United States following steps such as the passage by the House of Representatives of a non-binding resolution condemning BDS in July 2019. These debates, which have become embroiled in debates over bi-partisan support for Israel, the Trump administration, and the future of the Democratic Party, often overlook two important elements. The first is that Congress has already passed two pieces of counter-BDS legislation with significant consequences both on the symbolic and practical planes. This legislation was signed into law by former President Obama.

The second is that the noisy debates over BDS-related bills and Executive Orders have often overshadowed, and in some ways, obscured, more sophisticated and potentially-influential BDS-supported campaigns being quietly advanced in Congress. These efforts, such as the “No Way to Treat a Child” campaign, are being driven by U.S. and Palestinian BDS actors increasingly focused on political advocacy. The “No Way to Treat a Child” campaign, although it does not explicitly reference BDS, aims to further the delegitimization of Israel, a process that has served to lay the groundwork for political BDS in other countries.

The two Obama-era pieces of legislation opposing the modern BDS campaign²⁸ are the Bipartisan Congressional Trade Priorities and Accountability Act of 2015²⁹ and the Trade Facilitation and Trade Enforcement Act of 2015.³⁰

The Trade Facilitation and Trade Enforcement Act declares that Congress:

Opposes politically motivated actions that penalize or otherwise limit commercial relations specifically with Israel, such as boycotts of, divestment from, or sanctions against Israel; notes that [BDS] against Israel by governments, governmental bodies, quasi-governmental bodies, international organizations...are contrary to principle of nondiscrimination under the GATT 1994.

The law defines boycott of, divestment from, and sanctions against Israel as meaning:

Actions by states, nonmember states of the United Nations, international organizations...that are politically motivated and are intended to penalize or otherwise limit commercial relations specifically with Israel or persons doing business in Israel or in any territory controlled by Israel.

28 These are in addition to the legislation enacted originally in the 1970s against cooperation with the Arab-League boycott of Israel.

29 Section 19

30 Section 909

It declares that:

Among the principal trade negotiating objectives of the United States for proposed trade agreements with foreign countries [are]...to discourage politically motivated boycotts of, divestment from, and sanctions against Israel and to seek the elimination of politically-motivated nontariff barriers on Israeli goods, services, or other commerce imposed on Israel.

The legislation further sets out several concrete requirements. One is for the President to report annually to Congress on politically motivated boycotts against Israel and on U.S. steps to counter such boycotts. The bill states that:

Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the President shall submit to Congress a report on politically motivated boycotts of, divestment from, and sanctions against Israel.

(A) A description of the establishment of barriers to trade...by foreign countries or international organizations against United States persons operating or doing business in Israel, with Israeli entities, or in Israeli-controlled territories.

(B) A description of specific steps being taken by the United States to encourage foreign countries and international organizations to cease creating such barriers and to dismantle measures already in place.

(C) A description of specific steps being taken by the United States to prevent investigations or prosecutions... of United States persons solely on the basis of such persons doing business with Israel, with Israeli entities, or in Israeli-controlled territories.

(D) Decisions by foreign persons, including corporate entities and state-affiliated financial institutions, that limit or prohibit economic relations with Israel or persons doing business in Israel or in any territory controlled by Israel.³¹

A wide-ranging public discourse regarding BDS took place in July 2019, when the House of Representatives passed, by a margin of 398-17, H.Res. 246, "Opposing efforts to delegitimize the State of Israel and the Global Boycott, Divestment, and Sanctions Movement targeting Israel."³²

Among the most important provisions of the non-binding Resolution are:

Whereas the Global Boycott, Divestment and Sanctions Movement (BDS movement) targeting Israel is a campaign that does not favor a two-state solution and that seeks to exclude the State of Israel and the Israeli people from the economic, cultural, and academic life of the rest of the world; Whereas the Global BDS movement does not recognize, and many of its supporters explicitly deny, the right of the Jewish people to national self-determination;

Whereas university-based Global BDS efforts violate the core goals of the university and global cultural development and in some cases, leads to the intimidation and harassment of Jewish students;

Whereas the Global BDS movement promotes principles of collective guilt, mass punishment, and group isolation; and

Whereas in contrast to protest movements that have sought racial justice and social change, the

31 The legislation also states that: "no domestic court shall recognize or enforce any foreign judgment...if the domestic court determines that the foreign judgment is based, in whole or in part, on a determination by a foreign court that the United States person's conducting business operations in Israel or any territory controlled by Israel or with Israeli entities constitutes a violation of law."

32 Another fierce debate over BDS legislation took place several months earlier, in February 2019, when the US Senate passed The Combating BDS Act of 2019 (S. 1 and H.R. 336), which aims to support State counter-BDS legislation and prevent claims of pre-emption. The bill passed the Senate 77-23 but did not advance in the House.

Global Boycott, Divestment and Sanctions Movement targeting Israel is not about promoting coexistence, civil rights, and political reconciliation but about questioning and undermining the very legitimacy of the country and its people:

Now, therefore, be it Resolved, That the House of Representatives— (1) opposes the Global Boycott, Divestment, and Sanctions Movement (BDS movement) targeting Israel, including efforts to target United States companies that are engaged in commercial activities that are legal under United States law, and all efforts to delegitimize the State of Israel.

In July 2019, Representatives Ilhan Omar, Rashida Tlaib, and John Lewis introduced a non-binding Resolution, H. Res. 496, affirming that all Americans have the right to participate in boycotts in pursuit of civil and human rights at home and abroad. It appears that although the bill is clearly aimed at creating a positive environment for BDS, Omar and Tlaib sacrificed an explicit mention of BDS in order to bring Lewis on board and to build a broader coalition in favor of the legislation.

Another significant counter-BDS bill that has not yet been passed is the Israel Anti-Boycott Act, which would extend existing prohibitions against participating in boycotts promoted by countries (i.e. the Arab League boycott) to boycotts promoted by international governmental organizations such as the EU and UN. The provisions of this legislation have taken on added urgency with the publication of the UN Human Rights Council blacklist in February 2020. There have been increasing calls on the U.S. Administration to use its foreign policy and economic powers to advance the aims of the bill, in light of the partisan deadlock.

Delegitimization campaigns in Congress

As noted, even as the debates over anti- and pro-BDS bills continue to garner attention, a quieter and more sophisticated campaign to undermine Israel's legitimacy is underway in Congress.

The campaign, branded as "No Way to Treat a Child," is led by Defense for Children International-Palestine, a Palestinian NGO with links to the PFLP terrorist organization, and the Quaker American Friends Service Committee (AFSC). The AFSC has retained the services of one of the most prominent Israeli BDS activists, Dalit Baum.

The campaign's point person in Congress is Representative Betty McCollum, a member of the Democratic-Farmer-Labor Party who represents Minnesota's 4th congressional district. McCollum has introduced H.R. 2407, entitled, "Promoting Human Rights for Palestinian Children Living under Israeli Military Occupation Act," which would amend:

Section 620M of the Foreign Assistance Act of 1961, commonly known as the 'Leahy Law' by adding a new subsection that includes a generally applicable limitation prohibiting U.S. military aid from being used by foreign armed forces to support the military detention, interrogation, abuse, or ill-treatment of children in violation of international humanitarian law.³³

While the actionable element of the bill refers to "foreign armed forces" in general, without reference to Israel specifically, the bill itself contains a long list of NGO and UN quotes attacking Israel's alleged treatment of minors suspected of involvement in terrorism.³⁴ In fact, the bill often reads more like a BDS-supporting NGO report than congressional legislation.

The bill also includes an appropriation of 19 million dollars to NGOs involved in promoting the issue of the detention of Palestinian minors. Thus, the NGOs that are leading the campaign are also looking to have Congress fund it.

While a great deal of media attention has been given to the first-term members of Congress who support BDS, such as Tlaib and Omar, it is becoming increasingly clear that equal if not greater attention should be given to McCollum by those opposed to BDS. McCollum is one of the more senior members on the House Appropriations Committee and sits on its Defense Subcommittee. It is likely that she will continue to use her position to advance legislation aimed at delegitimizing Israel and creating the conditions for the promotion of BDS. Were she to achieve leadership of the Appropriations Committee or one of its relevant subcommittees, she would be in a position to use her role as both a symbolic and practical platform to advance BDS-supported initiatives.

Those looking to counter BDS should also pay greater attention to the U.S. Campaign for Palestinian Rights (USCPR). While the organization is in some ways less vocal or public than other BDS organizations, it has evolved into a well-connected political actor and acts as a primary facilitator of BDS promotion in the political sphere.

The USCPR acts as a door-opener to Congress for members of other pro-BDS groups and is heavily involved in the "No Way to Treat a Child" campaign. It focuses both on D.C. based political lobbying and increasingly, on activities in congressional districts. As described above, it is also an important driver of the municipal BDS campaign, launching the dedicated "Cities for Palestine" website.

33 https://nwttac.dci-palestine.org/tell_your_lawmaker_to_support_hr2407

34 During the last wave of lone-wolf terror in Israel, which began in September 2015, more than 100 serious attacks were carried out by minors. Palestinian minors are primary targets of the incitement to terror propagated by Hamas, the PLO, and PA.

In the USCPR's 2018 Annual Report, the organization's CEO, Yusuf Munnayer, explained that the organization has a "new three-year strategic plan mapping how to continue building power and then leverage it. This vision is shaping our work in forging relationships, investing more in municipal campaigns, and building political power."³⁵ The organization sees one of its main goals as building "a platform for Palestinian organizations on Capitol Hill" and describes as one of its major successes:

Coordinating a half-dozen tours for organizations including Addameer Prisoner Support and Human Rights Association, DCIP, Adalah, Adalah Justice Project, Al-Shabaka and Youth Against Settlements. In doing so, USCPR helps make it possible for Palestinian advocates to break into a policy arena.

According to the report, the organization organized "191 congressional meetings" in 2018.

The report also describes in detail the key role that USCPR played in the political lobbying aspect of the "No Way to Treat a Child" campaign. The organization describes how it "worked in tandem with Rep. McCollum and the "No Way to Treat a Child" campaign to provide vital grassroots and Hill advocacy support for the bill." USCPR played a key role in organizing meetings "with upwards of 40 congressional offices" and coordinating "more than 6,000 constituent letters of support and numerous town hall mobilizations" in support of the bill, as well as facilitating "dozens of Hill advocacy meetings for groups ranging from Addameer, the Palestinian political prisoners' advocacy organization" to other pro-BDS groups. It should be noted that Addameer has numerous ties to the PFLP terrorist organization, with much of its leadership affiliated with the PFLP.

The majority of the USCPR's 2019 Annual Report is dedicated to political advocacy activities, reflecting the organization's increasing specialization in this realm.³⁶

In addition to the USCPR, other major American BDS organizations are increasing their emphasis on political lobbying and advocacy. Jewish Voice for Peace (JVP) launched a 501(c)(4), known as JVP Action, in August 2019, as a vehicle for its lobbying work. American Muslims for Palestine (AMP), an organization that includes among its key figures several activists linked to groups closed down for providing funds to Hamas, is also increasing its focus on political advocacy.³⁷ AMP holds an annual 'Palestine Advocacy Day' on Capitol Hill in April, which includes "intensive training in political engagement...and a day of lobbying on Capitol Hill." It is open to all "who agree to the following principles: supporting the Call for Boycott, Divestment, and Sanctions."³⁸

The AMP's 12th annual conference, which took place in November 2019, also had a clear emphasis on political activity and was entitled: "Election 2020: Palestine Working for Justice." The conference included a number of sessions on issues such as "U.S. Foreign Policy and the 2020 Election: Legislative Agenda and Ending US Aid to Israel," the description of which noted, "Advocacy for Palestinian rights has now become a wedge issue, and we must keep it that way."³⁹

The trajectory of the BDS campaign on the US national political level will be tied, to a significant degree, to the political fortunes of the hard-left wing of the Democratic Party, including the Democratic Socialists of America-DSA. (Many of these hard-left elements coalesced around Bernie Sander's primary campaign.) As a result, BDS-supporting groups have been focusing on integrating their agenda into that of the

35 https://uscpr.org/wp-content/uploads/2017/11/USCPR_2018AnnualReport.pdf

36 <https://uscprannualreport.org/>

37 On May 12, 2016, the House of Representatives Homeland Security Committee Counterterrorism and Intelligence Subcommittee heard testimony from Jonathan Schanzer regarding "a network of former employees and donors from organizations that provided material and financial support to the terrorist organization Hamas, but who now work for or on behalf of an Illinois-based organization called American Muslims for Palestine (AMP)." <https://docs.house.gov/meetings/HM/HM05/20160512/104904/HHRG-114-HM05-Wstate-SchanzerJ-20160512.pdf>

38 <https://www.ampalestine.org/events/palestine-advocacy-day-training-2019>

39 <https://www.palestineconvention.org/wp-content/uploads/2019/11/AMP19-Main-Program-Final.pdf>

Democratic Party in general, for example through state party conventions, and into the DSA in particular. In 2017, the DSA National platform supported BDS, and in 2019, the DSA National resolved to set up a working group on BDS and Palestinian solidarity. The DSA National decided:

To establish a national working group dedicated to BDS and Palestine Solidarity...will reaffirm BDS and Palestine solidarity as a priority for the national organization. Whereas, a number of local DSA chapters are already involved in local and national level Palestine solidarity and BDS campaign organizing, in coordination with local and national Palestine solidarity organizations, and consolidation and coordination of these efforts would further develop and expand this work in DSA chapters.⁴⁰

While less the focus of headlines, it is campaigns such as “No Way to Treat a Child” and the quiet political work of groups such as USCPR, JVP, and AMP that have a greater potential for legitimizing BDS over time. This will especially be the case if the hard left-wing of the Democratic Party continues to grow, both in terms of number of representatives and influence over the party’s agenda and structures.

South Africa

South Africa is the country in which the campaign to advance BDS in the political sphere is in its most advanced stage. It is also the prime example of what happens when BDS is able to evolve in a supportive political environment, in which it can express many of its latent tendencies – the use of violence and threats, blatant anti-Semitism, and support for terror- without fear of governmental censure. As such, it merits a more detailed examination, given that the creation of such a supportive climate is not an impossibility in other countries in the event of a change in political fortunes.

Following a concerted campaign by South African BDS groups, support for BDS has become one of the wedge issues employed by the more extremist factions in the ruling African National Congress party (ANC), in their struggle against more pragmatic elements within the party. After intensive efforts by BDS groups, the ANC, at its December 2017 National Conference, passed a resolution "to direct the SA government to immediately and unconditionally downgrade the South African Embassy in Israel to a Liaison Office."

The South African Jewish Board of Deputies (SAJBD) and the South African Zionist Federation (SAZF) strongly condemned the move, stating:

We further question the motives of organizations and individuals who have managed to 'capture' the ANC's international relations agenda including the BDS. It appears to us that the ANC's foreign policy formulation process was hijacked by forces that have a limited interest in promoting South Africa's and key South African communities' wellbeing and are rather obsessed with undermining the viability of Israel and harming the local Jewish community. The broad presence of Hamas – a terrorist organization which actively calls for the destruction of Israel – at the Elective Conference and its extensive lobbying efforts supports this view.⁴¹

In April 2019, South Africa's Foreign Minister announced that the government had implemented the ANC directive, declaring:

Our liaison office in Tel Aviv will have no political mandate, no trade mandate, and no development cooperation mandate. It will not be responsible for trade and commercial activities.⁴²

40 <https://www.dsaua.org/files/2019/06/2019-Resolutions-Approved.pdf>

41 <https://www.facebook.com/SAJBD/posts/sa-jewry-feel-betrayed-by-anc-call-to-downgrade-sa-embassy-in-israelthe-south-af/1777273648973690/>

42 <https://www.jpost.com/Israel-News/South-Africa-downgrade-embassy-in-Israel-to-liaison-office-585883>

In addition to its use in internal ANC power struggles, BDS and anti-Israel rhetoric are also used by the ANC and other left-wing parties to attack their political rival, the Democratic Alliance, seen as more supportive of Israel.

In South Africa, BDS is able to go to its logical ends and express its true sentiments, buoyed by political support. Of course, this outcome is the result of a cycle – BDS activists make inroads into the ANC, generating political support for the movement, which then allows them to act in an increasingly extreme manner without facing significant consequences. In this situation, the anti-Semitism, violence, and support for terror of the BDS movement floats quickly to the surface.

To give just a few examples: In August 2013, BDS protesters sang "shoot the Jews" outside of a concert by an Israeli jazz musician. The Director of BDS South Africa (BDS SA), Muhammad Desai, later justified these calls.⁴³ In October 2014, anti-Israel activists, as part of the BDS campaign against the Woolworths department store, put a pig's head in the kosher section of the store (ironically on a shelf that contained primarily Halal meat).⁴⁴

In February 2015, the Students Representative Council (SRC) at Durban University of Technology, called for the expulsion of Jewish students. The Secretary of the SRC, Mqondisi Duma, said: "As the SRC, we had a meeting and analyzed international politics. We took the decision that Jewish students, especially those who do not support the Palestinian struggle, should deregister."⁴⁵ The call was strongly condemned by the University. In March 2015, BDS activists yelled slogans like "You think this is Israel, we are going to kill you!" and "You Jews do not belong here in South Africa!" outside of an event sponsored by the SAZF.⁴⁶

In addition to BDS South Africa, a central driver of the BDS campaign in South Africa has been the powerful COSATU labor union. Prominent figures in this union have also engaged in violent and anti-Semitic rhetoric. For example, in August 2014, then COSATU Western Cape Secretary General Tony Ehrenreich called for attacks against the SAJBD, writing:

The time has come to say very clearly that if a woman or child is killed in Gaza, then the Jewish board of deputies, who are complicit, will feel the wrath of the People of SA with the age-old biblical teaching of an eye for an eye.⁴⁷

In September 2018, the South African Human Rights Commission found that this statement amounted to prohibited hate speech and required Ehrenreich to provide the SAJBD with a written apology.⁴⁸

The violence and intimidation of the BDS campaign in South Africa are not only directed at Jewish groups. In June 2018, South African actress and model Shashi Naidoo posted comments supportive of Israel and critical of the Hamas terrorist organization on her Instagram. She was immediately bombarded by an extremely aggressive campaign threatening her with death and sharing her personal details online. She posted an online clip tearfully asking for the campaign of threats to stop.

43 <https://www.jpost.com/Jewish-World/Jewish-Features/South-Africa-BDS-leaders-defends-call-to-kill-the-Jew-325075>

44 <https://www.news24.com/SouthAfrica/News/Woolworths-Pigs-head-incident-appalling-20141024>
One BDS group attempted to half-heartedly distance itself from the action, stating, "It may be argued that the placing of a pig's head is a form of militant human rights action, however there is a great amount of sensitivity surrounding Halal and Kosher food."

45 <https://www.iol.co.za/news/south-africa/kwazulu-natal/outrage-over-anti-semitic-dut-call-1816540#VNy-RvmUfzgv>

46 <https://www.haaretz.com/jewish/bds-protesters-in-south-africa-threaten-to-kill-jews-1.5334950>

47 <https://www.jta.org/2014/08/15/global/south-african-jews-to-sue-union-leader-over-gaza-murder-charges>

48 <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/1527-media-statement-sahrc-releases-report-containing-findings-and-recommendations-in-an-investigation-against-mr-tony-ehrenreich-for-a-complaint-of-hate-speech>



Protest messages on placards at the "Gaza: Stop The Massacre" rally in Whitehall, London, UK. May 15, 2018

Several days later, she held a press conference flanked by the heads of BDS South Africa, in which she once again tearfully apologized and promised to work with BDS South Africa to "re-educate" herself about the Israeli-Palestinian conflict. The BDS intimidation had won out.

The BDS campaign, and particularly BDS South Africa, is also relatively open about its support for terror. Notorious terrorists have helped fundraise for BDS South Africa. In February 2015, PFLP terrorist Leila Khaled was a guest at BDS South Africa fundraising events.⁴⁹ In July 2019, BDS South Africa tweeted a picture of its leader Desai meeting with a representative of the PFLP, writing, "The PFLP works close (sic) with BDS SA in the global BDS campaign against Apartheid Israel."⁵⁰ The ANC's own embrace of terrorist organizations like the PFLP and Hamas serves to assure BDS SA that it is unlikely to face domestic consequences for its support for terror (although it may face legal, financial, and PR consequences in other countries with more robust counter-terror laws).

It should be noted that while BDS SA enjoyed a close relationship with the BNC for many years, as demonstrated for example when BDS SA arranged for the Speaker of South Africa's parliament to send a special greeting to the sixth BNC conference in March 2019, this relationship ended in September 2019. The BDS network in South Africa split into two over accusations of sexual harassment and cover-up.

In March 2019, BDS SA Director Desai was accused of sexually harassing US academic Sang Hea Kil and two other women. Desai downplayed the accusations. In May 2019, the BDS SA Board released a statement declaring that its investigation had cleared Desai of wrongdoing. However, many accused Desai and BDS SA of failing to carry out a proper investigation.

These accusations of a cover-up led to an acrimonious debate between BDS SA and the BNC, with the BDS SA claiming that it had decided to become "fully independent and autonomous from the BNC,"⁵¹ and Omar Barghouti claiming that the BNC had informed BDS SA that it "was no longer part of the BDS

49 <https://4il.org.il/wp-content/uploads/2019/02/MSA-Terrorists-In-Suits-English-1.pdf>

50 <https://www.jpost.com/International/Head-of-BDS-South-Africa-meets-PFLP-terrorist-and-PayPal-account-down-597734>

51 <https://www.totalprestigemagazine.com/bds-sa-expands-into-african-continent-rebrands-to-become-africa-for-palestine/>

movement.”⁵² Barghouti, in a March 2020 video, gave two reasons for this decision. The first was the failure to conduct a proper investigation into the sexual harassment claims. The second reason (and it appears from the video, the one that truly bothered Barghouti), was the “unexpected and quite unfortunate official position” by the BDS SA Board, “ending accountability to the BNC.” That is, BDS SA had dared to challenge the BNC’s role as supreme coordinator and gatekeeper of the BDS movement.

Consequently, BDS SA rebranded itself as “Africa for Palestine”, declaring that it would work to push back against Israel’s “creeping infiltration into our continent.” BDS actors affiliated with the BNC set up a new group named “South African BDS Coalition”, which was recognized as the sole legitimate representative of the BDS movement by the BNC. Both organizations have continued their BDS and delegitimization activities along the lines of the previous BDS campaigns.

The goal here is not to paint an entirely bleak picture of the situation in South Africa. The South African Jewish and counter-BDS community has tenaciously fought back against BDS anti-Semitism and violence, using a range of legal, political and public relations tools, and through building alliances with other constituencies, including Christian groups. For example, the counter-BDS community has waged a successful multi-faceted campaign to prevent the University of Cape Town from adopting a boycott of Israel. They have found allies and objective interlocutors in both academia and government, including in the ANC, and have been able to achieve a number of significant victories against BDS. The overall number of anti-Semitic incidents has actually decreased.

Nevertheless, the case of South Africa provides a stark warning as to what happens when the government and political elite create a permissive and even encouraging atmosphere for BDS activity. Such an eventual scenario is not unimaginable in other countries should the political climate change, and BDS supporters with terrorist sympathies gain political power.

United Kingdom

The UK Conservative-led governments have been staunchly opposed to BDS, giving expression to this stance in both word and deed. As described in the above section on municipal BDS, in 2015 and 2016, the UK issued two pieces of legislation and guidance aimed, inter alia, at countering municipal boycotts of Israel through procurement and pension policies. In December 2016, the UK became one of the first governments to adopt the IHRA definition of anti-Semitism, which, as clarified by the House of Commons Library, included the illustrative examples.⁵³

In September 2018 then British Prime Minister Theresa May declared:

We will proudly support Israel as the homeland for the Jewish people. One of the most sickening aspects of the anti-Semitism that tries, abhorrently, to suggest Israel is a racist endeavor – is that those voices seek to separate the Jewish diaspora in our country from their connection with Israel. We must be equally clear that there can never be any excuses for boycotts, divestment, or sanctions: they are unacceptable, and this government will have no truck with those who subscribe to them.⁵⁴

Following his December 2019 election victory, Conservative Prime Minister Boris Johnson declared in the House of Commons:

We will stop public bodies from taking it upon themselves to boycott goods from other countries,

52 https://www.youtube.com/watch?time_continue=355&v=93YmV_MXTUY&feature=emb_logo

53 <https://commonslibrary.parliament.uk/home-affairs/communities/uk-governments-adoption-of-the-ihra-definition-of-anti-Semitism/>

54 <https://www.gov.uk/government/speeches/pms-speech-at-the-united-jewish-israel-appeal-dinner-17-september-2018>

to develop their own pseudo foreign policy against countries, which with nauseating frequency turns out to be Israel.⁵⁵

This announcement followed the declaration in the Conservative Party's 2019 Manifesto that: "We will ban public bodies from imposing their own direct or indirect boycotts, disinvestment, or sanctions campaigns against foreign countries. These undermine community cohesion."⁵⁶ Going forward, the question as to how widely the term "public bodies" will be construed will be important for efforts to preempt BDS in the UK.

Labour's defeat in the December 2019 elections allayed immediate concerns that a Jeremy Corbyn-led government would quickly create a supportive environment for anti-Semitism and BDS. Nevertheless, despite Corbyn's electoral failure, the pro-BDS (and anti-Semitic) forces within the UK Labour party remain, and they have already demonstrated their influence within party institutions and among the rank and file. While some of these Labour activists may shift their focus to the civil society sphere (including by seeking to expand and intensify the activity of British BDS groups), many will continue to be active within party structures.

The Corbyn experience shows that the possibility that explicitly pro-BDS actors may gain predominance in one of the UK's two largest parties cannot be discounted. While Corbyn himself will no longer lead the Labour Party, the anti-Israel sentiments, which he helped legitimize and mainstream, have taken root among a significant percentage of the party's supporters. The outcome of the political and ideological struggle between the hard-left and more moderate factions of the Labour Party in the post-Corbyn era remains to be seen.

Ireland

In Ireland, the Control of Economic Activity (Occupied Territories) Bill 2018, which would prohibit trade in goods produced in Israeli communities over the Green Line, is making its way through the legislative process. If passed, it would be the first such law in Europe. The bill has passed through all five stages of the Irish Senate (the Seanad Éireann.) In January 2019, it passed an early stage in the Lower House, the Dail, by a vote of 78 for and 45 against. Following a review, the Parliamentary Foreign Affairs and Trade Committee and the Defence Select Committee announced in December 2019 that it "welcomes the Bill and recommends that it proceed to Third (Committee) Stage for further review."⁵⁷

Nevertheless, the Irish government and the Fine Gael party oppose the legislation and have taken steps to prevent it from advancing. Irish Foreign Minister Simon Coveney explained that the bill asks the government to take action on trade rules, independently of, and in contradiction to, those of the EU. This could lead to EU sanctions against Ireland. In December 2019, he reiterated this view, in response to a parliamentary question, declaring:

The Attorney General's legal interpretation is crystal clear. Ireland should not do this. Legally, it cannot do this. I understand why this Bill has emerged, but I do not believe it represents the right approach. My views on the legality and consequent appropriateness of this legislation are clear and on the record.⁵⁸

55 In November 2015, as Mayor of London, Johnson declared: "I cannot think of anything more foolish than to say you want to have any kind of divestment or sanctions or boycott against a country that, when all is said and done, is the only democracy in the region...Why boycott Israel? And by the way I think there is some misunderstanding over here about it. The supporters of this so-called boycott are really a bunch of, you know, corduroy-jacketed academics. They are by and large lefty academics who have no real standing in the matter."

56 https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conervative%202019%20Manifesto.pdf

57 <https://www.oireachtas.ie/en/committees/32/foreign-affairs-and-trade-and-defence/>

58 <https://www.oireachtas.ie/en/debates/question/2019-12-18/42/>

Germany

As mentioned, in May 2019, the German Parliament passed a strongly-worded cross-party resolution condemning BDS and labeling it anti-Semitic. This resolution was supported by a broad range of parliamentary factions on the left and right, including the CDU/CSU, SPD, FDP, and BUNDESDIE GRÜNEN. The resolution followed the adoption of similar resolutions by the youth wings of the various political parties (as well as by municipalities).

It should be noted that although the parliamentary resolution received broad support, there were debates within each of the parties prior to their decision to support the resolution. It appears that the German Ministry of Foreign Affairs was involved behind the scenes in the ultimately unsuccessful attempt to persuade MPs, particularly those on the parliamentary Foreign Affairs Committee, to vote against the resolution (although several members of the Foreign Affairs Committee did express their reservations regarding the resolution.)

Palestinian and German BDS groups launched an intensive campaign to dissuade the German government from adopting the resolution as formal policy. The degree to which the government will officially adopt the resolution or elements of it remains to be seen.

Austria

In February 2020, the Austrian Parliament adopted a resolution condemning any form of anti-Semitism, including anti-Semitism directed at Israel and BDS. The resolution, which was supported by all parties in the parliament (including the Greens), requested that the Austrian government develop a comprehensive strategy to prevent and combat all forms of anti-Semitism, and strongly condemn the BDS movement and its objectives, in particular the call to boycott Israeli products, companies, artists, scientists or athletes. In addition, it asked the government to refuse to provide premises and infrastructure to organizations that express anti-Semitic views or question Israel's right of existence, and to not support any events of the BDS movement or groups pursuing its goals, either financially or in any other form.⁵⁹

Spain

The Podemos political party and the cluster of satellite parties and civil society groups affiliated with it have been the drivers of BDS in Spain. Therefore, political constellations which gives Podemos and its far left allies significant political power will create a favorable environment for anti-Israel activity.

Such a possibility became more acute with the signing of an agreement between the Socialist PSOE and Podemos in November 2019, which would see Podemos leader Pablo Iglesias as Vice President. Iglesias has ties to the Iranian regime, and the Spanish Jewish community has expressed significant concern that his rise to power would lead to an increase in anti-Semitism. From a political and public perspective, it may well be easier for the PSOE to acquiescence to Podemos' demands related to Israel and the Palestinians, than to its demands in the economic or domestic arenas.

Podemos' role in the Spanish government will likely grant an aura of legitimacy to BDS activity, and expand the access of BDS-supporting groups to governmental resources. A PSOE-Podemos government would also most likely be dependent on the support of separatist parties. These parties have been staunch

⁵⁹ <https://www.austria.org/the-latest/2020/2/28/austrian-parliament-presents-resolution-proposal-condemning-anti-semitism-and-the-bds-movement>

supporters of BDS campaigns and have provided funding to BDS-promoting organizations in the past.

At the same time, given the identification of Podemos with BDS, it appears that there is a growing tendency among supporters of right-wing and centrist parties to adopt opposition to BDS as part of their opposition to Podemos' far-left agenda.

Chile

In November 2018, the Chilean parliament passed a resolution calling on the government to prohibit the import of products from Israeli settlements and to advise Chilean business not to do business connected to activity over the Green Line. It does not appear that the government is inclined to adopt this resolution, and particularly the proposed ban on settlement products, as policy.

European Union



Heating Up Again?



Protesters during the International Al-Quds Day Rally in Vienna, Austria, 2015.

The European Union contributes to the advance of BDS in two ways.

The first way is through implementing policies of “differentiation” between Israel and the West Bank. This policy to date has included the labeling of products coming from Jewish communities over the Green Line, exclusion of areas over the Green Line from EU-Israeli agreements, and non-recognition of the authority of Israeli institutions over the Green Line. These actions, while not constituting BDS activity in themselves, help the BDS campaign advance its goals in practice.

The second way in which the EU contributes to the advance of BDS is by providing millions of Euros in direct and indirect funding to BDS-promoting groups.

Both of these policies were advanced and defended by the EU’s High Representative for Foreign Affairs and Security Policy (HR/VP), Federica Mogherini. Nevertheless, for a variety of reasons, the EU arena has been relatively quiet in terms of BDS activity over the last several years.

In December 2019, Josep Borrell, of Spain’s left-wing Socialist Worker’s Party (PSOE), took office as the next EU High Representative for Foreign Affairs and Security Policy (essentially the EU’s foreign minister). While moderating factors exist, his political affiliation and harsh criticisms of Israeli policy as Spanish Foreign Minister point to the possibility that the EU arena will once again heat up and become a central battleground between pro- and counter-BDS actors.

The most well-known (though not necessarily the most consequential) expression of the EU policy of differentiation is the labeling of products from Jewish communities over the Green Line as products from an “Israeli settlement” or from the “Occupied Palestinian Territories.” In November 2015, the EU issued

an “interpretative notice” outlining the labeling requirement for goods produced over the Green Line.⁶⁰ In November 2019, in response to a challenge by the Psagot Winery and pro-Israel legal groups, the EU Court of Justice ruled that this labeling requirement was lawful and valid.⁶¹

Labeling is not a boycott. Products from the settlements may be imported and sold freely in the EU, as long as they are labeled according to EU guidelines. (Such goods are also not entitled to benefit from preferential custom tariff treatment under the EU-Israel Association Agreement). In fact, the European politicians pushing for labeling and differentiation have, for the most part, a strategic aim that is the opposite of that of the BDS movement. The EU, as a general rule, sees differentiation as a way of pressuring Israel in order to advance a two-state solution, whereas the BDS movement sees BDS as a way of undermining the possibility of a two-state solution. In this sense, the labeling requirement demonstrates that the EU does not accept the BDS position that such products must be banned.

Nevertheless, steps taken under the policy of differentiation, have led in some cases to a de facto boycott of certain settlement goods. For example, the EU has chosen not to recognize the authority of Israeli regulatory bodies to certify specific products produced over the Green Line, such as poultry, preventing their export to the EU. In addition, European and Palestinian BDS advocates have used EU differentiation measures to push for BDS in other arenas, such as the corporate, union, and municipal spheres.

A “road map” for differentiation was published in 2015 by the European Council on Foreign Relations (ECFR) think tank, entitled “EU Differentiation and Israeli Settlements.”⁶² The paper outlines directions in which those advocating for differentiation could extend and deepen EU measures against Israeli entities with some connection to activity over the Green Line. This report is illuminating, in that while its authors take pains to assert that the demands of differentiation are different from those of BDS, it is clear that the far-ranging steps they advocate would advance BDS campaigns and goals. Such actions would expand the de facto boycott of Israeli entities, especially but not exclusively of those located over the Green Line, harm Israel’s financial sector, and provide strong encouragement and “wind in the sails” of BDS activists. The report describes numerous areas in which the principle of differentiation could be applied and expanded, including:

The integration of the European and Israeli financial sectors,⁶³ given the role of Israeli banks in supplying capital and services to settlements.

The charitable status within the EU of organizations that support Israel’s settlement enterprise.

The validity within the EU of legal documents issued by Israeli authorities in the Occupied Palestinian Territories (OPTs).

EU interaction with Israeli state authorities based in occupied East Jerusalem.

The implications for dual EU-Israeli nationals of residing or conducting activities in the OPTs.

60 https://eeas.europa.eu/sites/eeas/files/20151111_interpretative_notice_indication_of_origin_en.pdf and http://eeas.europa.eu/archives/delegations/israel/documents/news/20151111_indication_of_origin_fact_sheet_final_en.pdf

61 The U.S. State Department criticized the EU ruling, stating: “The United States is deeply concerned by the EU requirement identified in the decision issued yesterday by the Court of Justice of the European Union (CJEU) in the Psagot Case. The circumstances surrounding the labeling requirement in the specific facts presented to the Court are suggestive of anti-Israel bias. This requirement serves only to encourage, facilitate, and promote boycotts, divestments, and sanctions (BDS) against Israel. The United States unequivocally opposes any effort to engage in BDS, or to otherwise economically pressure, isolate, or otherwise delegitimize Israel.” See <https://www.state.gov/decision-by-eu-court-of-justice-on-psagot-case/>

62 The report was written by Hugh Lovatt and Mattia Toaldo. See <https://www.ecfr.eu/page/-/EuDifferentiation-final3.pdf>

63 i.e., that such integration should be prohibited or reversed.

Regarding connections between EU and Israeli banks, the report asks questions such as:

Can the EU and member states permit themselves to supply fungible funds to European banks without ensuring that such funds cannot be directed into the capital structure of such Israeli entities?

And, therefore, do day-to-day dealings between European and Israeli banks comply with the EU requirement not to provide material support to the occupation?

Can European branches of Israeli banks be licensed to collect deposits and attract investments in the EU without ensuring that the fungible proceeds of these operations cannot be directed into the capital structure of such Israeli entities or employed to fund activities that contravene international law and are unlawful according to EU law?

While the authors choose to frame these suggestions as questions, it is clear that they are advocating for a boycott of Israeli banks by their European counterparts. This is one of the primary campaigns of the BDS movement, and the consequences of such a step for the Israeli financial system would be far-reaching. This is a strong indication that the ECFR road map is BDS disguised as differentiation.

The ECFR continues to be active in promoting differentiation, and Hugh Lovatt, its chief researcher on the topic, has played a crucial role in setting up a new NGO, the “European Middle East Project” (EuMEP), to advocate for these policies vis a vis the EU.⁶⁴

The campaign to implement policies of differentiation received a significant boost with the passage in December 2016 of UN Security Council Resolution 2334, which passed after a decision by U.S. President Barack Obama, in the last days of his presidency, to refrain from vetoing the resolution (some saw this as a final move by the lame-duck president to “punish” Israeli Prime Minister Benjamin Netanyahu, with whom he had a contentious relationship, particularly regarding U.S. policies on Iran).⁶⁵ UNSC 2334 includes a call “upon all States to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967.”⁶⁶

EU-focused BDS groups, most prominently the European Coordination of Committees and Associations for Palestine (ECCCP), which works closely with the BNC, have focused on calling for an EU-wide boycott of settlement products. They have also been intensively promoting a campaign calling for the exclusion of Israel in general, and Israeli security and defense companies in particular, from participation in European research frameworks. This campaign has focused on the upcoming Horizon Europe framework, which is intended to allocate approximately 100 billion euro to research funding frameworks and projects from 2021-2027. It should be noted that the Horizon Europe framework may see new limitations on the participation of non-EU countries, as compared to the current Horizon 2020 funding framework, unrelated to the BDS campaign.

As noted, the second way in which the EU supports BDS is through the provision of funds to BDS and BDS-promoting European, Palestinian, and Israeli NGOs.

HR/VP Mogherini strongly defended the EU’s position that such funding was legitimate, and coherent with the EU’s declared opposition to BDS, as long as the funds themselves were not earmarked for BDS activities. In this manner, she chose to ignore the argument that money is fungible and that funds earmarked for one purpose enable a BDS-promoting organization to free up other resources for BDS activity. Interestingly, the EU itself used the argument that money is fungible in explaining the broad

64 <https://eumep.org/people/>

65 See for example https://www.washingtonpost.com/opinions/obamas-final-most-shameful-legacy-moment/2016/12/29/ee04bcca-cdfc-11e6-a747-d03044780a02_story.html

66 <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

scope of the restrictions it imposed on the eligibility for EU grants of Israeli entities with connections to activity over the Green Line.

Despite these policies, EU-Israel political relations, with regards to the Israeli-Palestinian conflict, have been relatively quiet since tensions came to a head in the period between 2013-2015. In those years, tensions flared around the publication of the “EU Guidelines on the eligibility of Israeli entities and their activities in the territories for grants, prizes, and financial instruments funded by the EU” in July 2013. Tensions remained after the compromise in November 2013 regarding Israel’s participation in the Horizon 2020 framework under the EU Guidelines, and the November 2015 issuing of the EU Interpretive Notice on labeling of Israeli products.⁶⁷

The relative quiet on the political front (with occasional outbursts) has been the result of several factors: an EU focus on other pressing issues such as migration, Brexit, and relations with the United States, an understanding of the benefits of EU-Israel scientific, technological, and security cooperation, and improving relations between Israel and some EU member states. The strengthening of Israel’s relations with several Central, Eastern, and Southern European countries, has made passing measures against Israel that require consensus much more difficult (although under Borrell, there may be a movement away from requiring consensus on some EU foreign policy decisions.)

With Mogherini’s replacement by Borrell, it remains to be seen the degree to which the European External Action Service (EEAS) under its new leadership will push for additional pressure or “differentiation” measures against Israel (or additional funding for BDS groups). While some decisions, such as funding to particular NGO frameworks, regulations, and technical policies by the directorates-general are likely to be set by lower-level EU bureaucrats, the overall policy direction set by Borrell regarding the Israel-Palestinian arena could influence the EU-wide approach.

On the one hand, the factors which have served to moderate EU-Israel tensions regarding the Palestinian arena over the last several years, such as EU pre-occupation with other issues, the break-down of a consensus supporting measures to pressure Israel, and the mutual benefits of EU-Israel cooperation, remain. EU-Israel cooperation is helping the EU and European countries address some of their most pressing challenges, including cyber-security, homeland security, health care, and sustainable development.

On the other hand, Borrell’s left-wing affiliations and history may make him more attentive to the demands of pro-BDS groups, or more likely to appoint officials who are highly critical of Israel and who will seek ways to pressure the Jewish State. In such a case, the EU arena will once again heat up and become a key battleground for pro- and counter-BDS actors. For the counter-BDS community, a deep understanding of EU processes and players, the development of networks of relationships, timely information-gathering, and effective EU-appropriate communications, will be vital to countering Brussels-based BDS initiatives.

67 <https://mfa.gov.il/MFA/PressRoom/2015/Pages/Israel-condemns-EU-decision-on-labeling-11-Nov-2015.aspx>
Tensions of course flared to a very significant degree in the lead-up to the signing in July 2015 of the Joint Comprehensive Plan of Action (JCPOA) with Iran, but this was not related, at least directly, to the Israeli-Palestinian arena.



Anti-Israel and Pro-Palestinian demonstrators at Piazza del Duomo in Florence, Italy on July 17, 2014.

UN Human Rights Council Blacklist

UN rights office issues report on business activities related to settlements in the Occupied Palestinian Territory

[Arabic](#) | [Hebrew versions](#)

GENEVA (12 February) – The UN Human Rights Office on Wednesday issued a report on business enterprises involved in certain activities relating to settlements in the Occupied Palestinian Territory, in response to a specific request by the UN Human Rights Council, contained in a March 2016 resolution, that mandated the Office to produce a database of business enterprises involved in such activities.*

In an interim report (A/HRC/37/39) presented to the Human Rights Council in March 2018 by the then High Commissioner, Zeid Ra'ad Al Hussein, the UN Human Rights Office noted it had reviewed information that was publicly available, or had been received from a variety of sources, about an initial 307 companies. After further research, the total number reviewed increased to 321. Of these, a total of 206 companies were considered for further assessment.

The report released on Wednesday sets out conclusions following further communications with business entities, as well as a thorough review and assessment of all information available. It identifies 112 business entities which the UN Human Rights Office, on the basis of the information it has gathered, has reasonable grounds to conclude have been involved in one or more of the specific activities referenced in Human Rights Council resolution 31/36.

Screenshot from OHCHR Website

On February 12, 2020, the UN Office of the High Commissioner for Human Rights (OHCHR) published its blacklist of companies allegedly “involved in certain activities relating to settlements in the Occupied Palestinian Territory, in response to a specific request by the UN Human Rights Council, contained in a March 2016 resolution...”⁶⁸

In the resolution from March 2016 (31/36), the UN Human Rights Council (UNHRC), a body with a long history of anti-Israel bias, condemned “Israeli settlements in the Occupied Palestinian Territory”, and focused extensively on the issue of business activity over the Green Line. Operative paragraph 17 of the resolution requests:

The United Nations High Commissioner for Human Rights, in close consultation with the Working Group on the issue of human rights and transnational corporations to produce a database of all business enterprises involved in the activities detailed in paragraph 96 of the aforementioned report, to be updated annually.

This was the first time that the UN High Commissioner for Human Rights was tasked with producing a blacklist of companies.

The list of activities that qualify a company to be included on the blacklist is based on a 2012 UNHRC report which purported to examine the “the implications of the Israeli settlements on the civil, political, economic, social, and cultural rights of the Palestinian people.” The list is extremely broad and includes inter alia:

- The provision of services and utilities supporting the maintenance and existence of settlements, including transport.
- Banking and financial operations helping to develop, expand, or maintain settlements and their activities, including loans for housing and the development of businesses.
- Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including restrictions on movement, administrative and legal constraints.

As such, the list reflects a sophisticated strategy being deployed by pro-BDS legal groups, such as Al-Haq, that have long been shepherding anti-Israel processes at the UNHRC. These actors understand that while calls for a comprehensive boycott of Israel do not enjoy significant support in the mainstream, calls to boycott settlement activity can attract broader support, particularly at the UN. Therefore, their strategy has been to expand the meaning of what constitutes support for, or involvement in, settlement activity. The use of criteria like “captivity of the Palestinian financial and economic markets” and “practices that disadvantage Palestinian enterprises” enables such efforts to be framed in the language of settlement boycotts, but to include, in theory, almost any company doing business in Israel.

Following the passage of the UNHRC resolution in March 2016, BDS movement research bodies such as Who Profits and the American Friends Service Committee ‘Investigate’ project, along with other BDS-supporting groups such as the BNC, began transferring names of companies to the OHCHR. The OHCHR noted that it had reviewed information regarding 321 companies.

Publication of the database was delayed as Israel and its allies objected that compilation of a blacklist went far beyond the UNHRC’s mandate, and was blatantly discriminatory against Israel (as the blacklist would not include companies operating in any other territory considered by the international community to be occupied.) As noted by George Mason University legal scholar Eugene Kontorovich, dozens of the world’s leading companies, including many of Europe’s largest corporations and those that are partially state-owned or controlled, operate openly in areas considered occupied, such as Northern Cyprus and Western Sahara. Such activity has never been deemed illegal in any other context, either by the governments of the states in which the companies are domiciled, or by the UNHRC.⁶⁹

The database published by the OHCHR in February 2020 contained 112 companies, 94 of them Israeli, 6 American, and 12 from five other countries. Israel and its allies condemned the publication. For example, U.S. Secretary of State Mike Pompeo declared:

I am outraged that High Commissioner for Human Rights Michelle Bachelet published a database of companies operating in Israeli-controlled territories. The United States has long opposed the creation or release of this database, which was mandated by the discredited UN Human Rights

69 For Kontorovich’s extensive survey of this issue, see https://uploads-ssl.webflow.com/59f05a891481a800018f8f07/5a01d2f3240da900013da181_WhoElseProfits_online.pdf

Council in 2016. Its publication only confirms the unrelenting anti-Israel bias so prevalent at the United Nations...We call upon all UN member states to join us in rejecting this effort, which facilitates the discriminatory boycott, divestment, and sanction (BDS) campaign and delegitimizes Israel...⁷⁰

Similarly, the U.S. Secretary of Commerce Wilbur Ross stated:

Boycotts against Israel and companies doing business with and in Israel are contrary to longstanding U.S. policy. The UN “blacklist” is anti-business, seeks to isolate Israel, has no factual basis or legal force whatsoever, and should not be adhered to in any respect. The Government of the United States fully supports the U.S. companies identified on the list and encourages all U.S. businesses to continue to work with and invest in Israeli as well as Palestinian communities.⁷¹

The BDS movement celebrated the publication of the blacklist as a major victory, and immediately began to use it to promote BDS in other arenas. For example, the BNC released a statement saying: “Palestinian civil society welcomes this long-awaited UN list of companies that are complicit in Israel’s illegal settlement enterprise” and declaring that, “It is high time for all public institutions, city councils, churches, trade unions, cultural organizations, universities, investment funds, and others to stop contracting, procuring from or investing in any of the companies on the UN list of shame.”⁷²

However, the truth regarding the blacklist is more complex. On the one hand, as was predicted by the counter-BDS community, the list is being used as a tool of BDS. On the other, a more careful examination of the list shows that it in fact reflects a rejection of key BDS arguments and claims, and a failure of the BDS movement’s lobbying efforts.

Many of the BDS movement’s most central and long-standing targets were not selected for inclusion on the list, and not for lack of trying on the part of BDS. All of the BDS movement’s favorite targets were among the 300 plus companies whose names were submitted for inclusion. However, despite the UNHRC’s virulently anti-Israel orientation, and despite the very broad mandate given to the committee preparing the list, the OHCHR could not justify including many of the companies that the BDS movement has long argued deserve to be singled-out.

As the BNC itself noted with dismay, many of its prime targets do not appear on the blacklist. The missing targets include:

Numerous companies and banks involved in direct or indirect business activities in or with settlements...G4S, Hewlett Packard companies, Elbit Systems, Caterpillar, Hyundai Heavy Industries, Volvo, Heidelberg Cement, and Cemex are among many other high-profile companies.

Additionally, the OHCHR committee did not include any companies under the broadest and most amorphous of the inclusion criteria it was provided, such as “Captivity of the Palestinian financial and economic markets.”

In the final analysis, despite years of BDS efforts, and the vast body of reports it has generated, the BDS

70 <https://www.state.gov/un-office-of-the-high-commissioner-for-human-rights-database-report-release/>

71 <https://www.commerce.gov/news/press-releases/2020/03/statement-us-secretary-commerce-wilbur-ross-un-blacklist-companies>

72 <https://bdsmovement.net/news/release-long-delayed-un-settlement-database-significant-step-towards-holding-israel-accountable>

movement's main targets were rejected for inclusion on the blacklist due to their failure to meet the UN's criteria.⁷³ It would appear then that there is little justification for any other public, economic or civil society bodies to blacklist these companies.

The BDS movement is hoping to convince the OHCHR to add its priority targets in the future. The OHCHR report recommended "that the Human Rights Council establish a group of independent experts, with a time-bound mandate" for the purpose of updating the list annually. At the same time, it is seeking to use the blacklist to both pressure the companies that appear on it, and to give a UN imprimatur to campaigns against other companies, even those that were not included on the list.

The counter-BDS community must make every effort to mitigate the impact of the blacklist. This includes engaging with the blacklisted companies and clarifying that the list has no legal basis, goes against international practice and law, and is a product of the UNHRC's obsession with Israel. Companies should also be made aware that complying with the blacklist may have significant negative consequences, for example due to U.S. state counter-BDS legislation.

It is important that existing U.S. legislation, which prohibits participation in boycotts established by governments, be expanded to include boycotts established by international governmental organizations. As noted earlier in this report, this is the aim of the Israel Anti-Boycott Act, which has failed to advance due to partisan gridlock. If this logical (and widely-supported) expansion of existing legislation cannot be advanced, possibilities for extending the prohibition on participation in such boycotts through the exercise of executive powers should be examined.

It has been argued that given that the OHCHR has targeted U.S. companies employing tens of thousands of Americans, the U.S. should take steps against the OHCHR and UNHRC (the U.S. left the UNHRC in 2018.) Such steps could include ending the U.S.' voluntary contributions to the OHCHR, withholding its part of the UN regular budget funding the OHCHR, and suspending engagement with the Office.⁷⁴ Given that the BDS movement and its allies on the UNHRC are working to have the blacklist become an ongoing process with annual additions of companies, it is important that the U.S. make clear that such actions will have a direct impact on its funding and cooperation with the UN bodies.

73 Several companies that were included, such as General Mills (which somewhat ironically, is headquartered in Ilhan Omar's congressional district) had barely been on the radar of BDS at all.

74 See for example <https://www.heritage.org/middle-east/commentary/how-the-us-should-respond-uns-latest-anti-israel-action>



The UN, Geneva, Switzerland.

The International Criminal Court (ICC)



In December 2019, International Criminal Court (ICC) Prosecutor Fatou Bensouda announced the conclusion of her preliminary examination of the Situation of Palestine, alleging that there is a “reasonable basis to proceed with an investigation into the situation in Palestine. I am satisfied that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip.” Among the potential “crimes” in the Prosecutor’s view are “the transfer of Israeli civilians into the West Bank since 13 June 2014.”⁷⁵ Israel strenuously rejected the Prosecutor’s announcement, declaring:

The decision of the Prosecutor of the International Criminal Court not to dismiss the Palestinian case that calls for a criminal investigation of Israelis is unfounded and outrageous. It has turned the ICC into a political weapon waging political war against the Jewish state.⁷⁶

A number of Western countries came out in support of Israel’s opposition to the ICC Prosecutor’s announcement.

If the ICC Prosecutor proceeds with an investigation against Israel, such a move will likely be used by the lawfare organizations that make up a key element of the BDS movement to promote legal claims in favor of BDS.⁷⁷ These organizations’ choices regarding which targets to prioritize may be impacted by future decisions of the Prosecutor as to which alleged Israeli actions to focus on most extensively (i.e. whether she chooses to focus on Israel’s actions during its military conflicts with Gaza-based terrorist organizations, its response to the Gaza border riots, or its activities in the West Bank). It is likely that such decisions will be based both on where she believes she has the strongest case, and where she can give a semblance of impartiality to her investigation (for example, by investigating Hamas terror attacks as well.)


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2019

FM KATZ
Deputy FM Hotovely
MFA Spokesperson
MFA in Action

2020 >
2019 v
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Joint statement by the Israel Ministry of Foreign Affairs and Ministry of Justice regarding the International Criminal Court Prosecutor's decision

21 Dec 2019

The Prosecutor has been influenced by Palestinian manipulation, which aims to weaponize the Court. The attempt to turn a political issue into a legal one places a serious obstacle in the way of resolving the conflict.

The decision of the Prosecutor of the International Criminal Court not to dismiss the Palestinian case that calls for a criminal investigation of Israelis is unfounded and outrageous. It has turned the ICC into a political weapon waging political war against the Jewish state.

The Court has jurisdiction only in cases brought before it by sovereign States. The simple truth is that there is no Palestinian state and there never has been such a state. Accordingly, the Court has no jurisdiction in this case and claiming otherwise is a distorted act of legal acrobatics.



Screenshot from Israel Ministry of Foreign Affairs Website

75 https://www.icc-cpi.int/CourtRecords/CR2019_07637.PDF para. 95

76 <https://mfa.gov.il/MFA/PressRoom/2019/Pages/Joint-statement-by-Israel-MFA-and-MOJ-regarding-ICC-Prosecutor-s-decision-21-Dec-2019.aspx>

77 The anti-Israel lawfare implications of such an investigation go far beyond the BDS campaign.

The Economic Arena



The “Low-Hanging Fruit” Strategy



Posters on the London Underground urge commuters to boycott sports brand Puma because of its sponsorship of the Israel Football Association (IFA), October 25, 2019. Photo from Middle East Monitor

The BDS movement requires the constant production and advertising of BDS “victories”. This is crucial to support the movement’s internal narrative that it is zeroing in on its “South Africa moment”, to maintain motivation among BDS advocates and to recruit new activists, particularly those who are closer to the mainstream and more likely to “bet on a winning horse.”

While this need exists in all areas of BDS activity, it is particularly acute in the economic arena. BDS has failed to have almost any measurable impact on the Israeli economy as a whole. Israel’s economy continues to grow, foreign direct investment in Israel is reaching record highs, and Israel’s credit rating continues to improve (in fact, Israel’s credit rating has continuously improved since the launch of the BDS movement).⁷⁸ According to one study, the proportion of damage caused by BDS to the Israeli economy from 2010-2017 was 0.004%, while some of the targeted Israeli companies reported actually benefiting from the campaign, due to the reaction of consumers opposed to the boycott.⁷⁹ BDS movement leaders like to claim that BDS has cost Israel billions in lost potential income, but such a claim is difficult to prove or quantify.⁸⁰

There have been a handful of companies that have succumbed to BDS pressure, such as G4S and Veolia. There have also been a small number of financial institutions, particularly in northern Europe, which blacklisted for a time several Israeli entities. These financial institutions, such as Danske Bank and PGGM, have largely reversed their previous decisions and removed most, if not all, of the Israeli entities from their blacklists. Even those that have not removed all Israeli entities from their exclusions lists have, in nearly all cases, declared that they are not boycotting Israel and remain invested in other Israeli companies.

Given the importance of producing a constant flow of “victories,” the BDS campaign, in general, and the BDS movement leadership, in particular, have adopted a strategy of pragmatism and focusing on “low-hanging fruit.” While they continue to pay lip service to their call for a full boycott of Israel, they focus not on those companies most heavily invested in Israel, most important for the Israeli economy, most heavily involved in Israeli security activities, or even on those most involved in activities over the Green Line. Instead, they focus on where they think they have the greatest chance of claiming a win.

78 <https://mof.gov.il/en/PublicationsAndReviews/TheCreditRating/Pages/IsraelsCreditRating.aspx>

79 <https://en.globes.co.il/en/article-bds-has-zero-impact-on-israeli-businesses-1001255776>

80 For example, this claim was made by prominent BNC figure Mustafa Barghouti at the Sixth BDS National Conference in March 2019. See <https://www.terrorism-info.org.il/en/6th-palestinian-bds-campaign-conference-held-al-bireh-decisions-significance/>

As the BNC itself explains on the “What to Boycott” section of its official website:

The Palestinian BDS National Committee (BNC) calls for a boycott of all Israeli products, but we also target our boycotts to focus on a small number of companies and products for maximum impact. We focus on companies that play a clear and direct role in Israel’s crimes and where we think we can have an impact.⁸¹

The need to produce victories and the strategy of focusing on low-hanging fruit have the following six consequences for the activity of the BDS movement in the economic and financial spheres:

1. One key predictor as to which companies will be prioritized by BDS is the existence of an ongoing divestment campaign against a company which is unrelated to BDS, but for whose outcome BDS can claim credit.
2. Another key predictor is whether the company has shown itself vulnerable to BDS pressure by partially giving in or engaging with BDS campaigners (or is in an industry in which other companies have shown themselves vulnerable).
3. In order to meet the demand for constant “successes,” the BDS movement will manufacture and advertise artificial victories.
4. The adoption of BDS “virtue-signaling” in cases where actual boycotts would be overly inconvenient.
5. Focus by the BDS movement on settlement-related boycotts, despite its declared opposition to such boycotts in principle, while at the same time acting to expand and blur the definition of settlement-related activity. This allows BDS activists to frame campaigns aimed at undermining Israel as a whole in the language of opposition to the settlements.
6. When the BDS movement believes that it has been or will be unsuccessful in convincing a company to boycott Israel, it will shift to complementary tactics such as the use of bullying and threats, or more indirect methods such as proposing the adoption of human rights-focused investment screens, in order to pressure institutional investors not to invest in the company.

In July 2019, the BNC published a press release in honor of the 14th anniversary of the BDS call. This release emphasizes the following companies as current priority targets for the BDS movement: AXA, HSBC, CEMEX, Puma, and HP, as well as tourism and travel companies Airbnb, Booking.com, Expedia, and TripAdvisor.

The selection of these companies is a good example of the above-listed consequences of the BDS’ pragmatic, low-hanging fruit strategy, and therefore deserves further examination.

81 <https://bdsmovement.net/get-involved/what-to-boycott>

Key Predictors:

The existence of an ongoing divestment campaign against a company, unrelated to BDS:

BDS will often seek to take advantage of and latch on to existing campaigns against a company or industry. The most prominent example of this tactic is the BDS movement's piggybacking on the international campaign against cluster munitions.

The campaign against cluster munitions, which includes a campaign to convince investors to boycott companies involved in their production, is a broad international campaign, not focused on Israel per se. For example, the 2018 report of the Cluster Munition Coalition (CMC) and PAX, central actors in this campaign, focused on Chinese, South Korean, Indian, and Brazilian companies.

However, in November 2018, one of Israel's leading defense companies, Elbit Systems, acquired another Israeli defense company, IMI systems. This acquisition was a process that had taken several years, but the deal cleared final hurdles in 2018. IMI, formerly known as Israel Military Industries, had reportedly been involved in the production and sale of cluster munitions. Therefore, the 2018 CMC/PAX report sounded a "Note of Caution" regarding Elbit systems, stating:

Early 2018, it was reported that Elbit Systems would take over IMI Systems...At the time of this writing it is likely that Elbit will acquire IMI Systems before the end of 2018...We call on Elbit Systems to fully end its involvement with (key components of) cluster munitions. We also call on investors in Elbit Systems to engage with this company to make it sever all its involvement with the production of cluster munitions.⁸²

The acquisition of IMI by Elbit led several financial institutions, which have adopted policies of not investing in companies producing cluster munitions, to divest from Elbit. These institutions included the investment bank HSBC and a subsidiary of French insurer AXA. As HSBC clarified in a statement:

HSBC's decision to divest from Elbit Systems was not the result of campaigning by the Boycott, Divestment and Sanctions movement, and it is not indicative of support for the movement's objectives. HSBC's decision was based on our long-standing defense policy whereby we do not invest in companies linked to the production or marketing of cluster munitions.⁸³

However, ever in need of a constant supply of "victories," and despite the explicit denial in the case of HSBC, the BDS movement celebrated the decisions to divest from Elbit. On its 14th anniversary, BNC crowed in a press release: "A fully owned subsidiary of the insurance giant AXA divested from Israeli drone manufacturer Elbit Systems. This comes after HSBC confirmed late last year that it had fully divested from Elbit Systems."⁸⁴

82 <https://stopexplosiveinvestments.org/wp-content/uploads/latest-report-worldwide-investments.pdf> p. 25

83 <https://www.jpost.com/BDS-THREAT/HSBC-tells-Post-We-divested-from-Elbit-over-clusters-bombs-not-BDS-576175>

84 <https://bdsmovement.net/news/bds-14-hope-face-israeli-apartheid>

Whether the company or other companies in the same sector, have shown themselves vulnerable to BDS pressure:

If a company shows the BDS movement that it is vulnerable to pressure by giving in to some BDS demands or engaging with BDS activists, this will increase the chances that the BDS campaign against the company will intensify.

CEMEX, the Mexican building materials company, is a good example of this BDS tactic. In 2015, CEMEX gave in to one BDS demand by selling its holdings in an Israeli quarry located in the West Bank. It has since refused to give in to other BDS demands and continues to operate three concrete mixing plants in Israeli-controlled industrial zones in the West Bank (in which, it should be noted, the majority of workers are Palestinian). CEMEX explains on its website that these plants:

Operate in industrial zones with the permits and licenses required by local laws, and remain committed to the principles outlined by the UN Global Compact. The locations in which the concrete plants are situated were defined in the interim agreements between Israel and the Palestinian Authority. The agreement states that these areas will be under the administrative responsibility of Israel until a permanent agreement is reached. Therefore, these settlements are legal and compatible with the existing agreement between the cited parties. Moreover, much of the facilities' concrete production is delivered to Jerusalem, where it is used for residential and infrastructure projects, meeting the demands of all local communities, regardless of race or faith.⁸⁵

However, despite Cemex's declaration that it does not intend to give in to further BDS demands, the BDS movement, seeing that the company once showed itself vulnerable, continues to prioritize it as a target.⁸⁶

This principle applies not only to companies that surrender to BDS demands but even to those that merely attempt to engage BDS activists in serious dialogue. While it is understandable why companies may believe that engagement is a good policy and that the activists might be open to hearing the company's point of view, in practice, such a policy only serves to intensify BDS campaigns. BDS activists interpret such attempts as a sign of pressure and an invitation to push harder. Companies that consistently ignore BDS pressure are more likely to see the campaign against them decrease, as the BDS movement chooses to look for softer targets.

The case of HSBC is a good example of this principle. Following the launch of a BDS campaign against the bank, HSBC attempted to engage British BDS groups in dialogue. This willingness was interpreted by BDS groups as a sign that the company was under pressure and could be pressed into accepting their demands. As described by the organization, "War on Want," a key member of the British BDS campaign:

In summer 2017, we launched our campaign to pressure HSBC to cut all ties with companies selling weapons and security services to Israel's repressive regime. Activists held pickets at HSBC branches in over 20 locations in the UK, and over 10,000 people emailed HSBC demanding divestment.

85 <https://www.cemex.com/sustainability/stakeholder-engagement/our-neighbors?inheritRedirect=true>

86 In addition, given that CEMEX is a company located in a Spanish-speaking country, it may serve well the BNC's ongoing attempts to expand its operations in Latin America.

HSBC responded by asking for a meeting. In September 2017, and again in March 2018, we met with bank executives to reiterate that HSBC must immediately divest from companies selling arms to Israel.

We took one clear message away from our meetings with the bank's executives: HSBC is nervous about the public response to its business complicity. And to us, that means one thing: time to increase the pressure on HSBC.⁸⁷ (emphasis added.)

Likewise, the G4S security company discovered that each time it attempted to engage BDS groups involved in the campaign against it that began in 2010, or to respond to BDS accusations, the campaign not only intensified but broadened the scope of its demands.

Similarly, if one company in a particular sector has given in or engaged with BDS, this increases the probability that other companies in the same sector will be targeted. The BDS movement reasons that if one company can be successfully pressured, other companies in the same industry may prove vulnerable as well.

This is demonstrated by the intensified focus on the tourism and travel companies, Airbnb, Booking.com, Expedia, and TripAdvisor. This focus is a result of Airbnb's November 2018 decision to delist approximately 200 Jewish-owned properties in the West Bank (following a BDS campaign against the company). After extensive public and legal backlash, Airbnb reversed its decision in April 2019. However, although Airbnb reversed its decision, and although the company from the outset repeatedly denied that it supported BDS, and insisted that it remained committed to investment in Israel, major BDS groups "smelled blood." The BDS movement, therefore, continues to focus on travel companies, with the hope that the initial success against Airbnb can be replicated.

If a company has shown that it can be pressured into giving in to BDS demands, then even after it has capitulated, and the BDS movement has declared victory, the BDS movement is still unwilling to end the campaign. As long as the BDS campaign has hope that a few more drops of "victory" can be squeezed out of the vulnerable company (and given that in most cases, extensive resources have already been invested in creating and disseminating the campaign), the campaign will continue.

For example, in October 2014, even as BDS celebrated as a "major success" SodaStream's announcement that it would be closing down its production plant in the Mishor Adumim industrial area located in the West Bank, and moving its plant to Israel's southern Negev region,⁸⁸ the BNC's spokesperson declared, "SodaStream will remain a focus of boycott campaigning."⁸⁹ While it is undeniable that the Negev is within the Green Line, the BDS used, as an excuse for its continued campaign, the land disputes between the state and the semi-nomadic Bedouin citizens of Israel living in the area.⁹⁰ Given that SodaStream had shown itself vulnerable to BDS pressure,⁹¹ and given that extensive resources had already been invested in disseminating the anti-SodaStream campaign worldwide, the BNC had no interest in ending the campaign. This, despite the fact that the company moved entirely to within the lines of pre-1967 Israel.

In 2018, it was announced that SodaStream would be acquired by PepsiCo for 3.2 billion dollars. Following news of the sale, BDS leader Omar Barghouti affirmed that "SodaStream is still subject to boycott by the

87 <https://waronwant.org/hsbc>

88 A move which would primarily impact SodaStream's Palestinian workers, eventually costing 500 Palestinians their jobs.

89 <https://bdsmovement.net/news/sodastream-close-illegal-settlement-factory-response-growing-boycott-campaign>

90 A dispute with many similarities to disputes between national authorities and semi-nomadic populations in other parts of the world.

91 It should be noted that SodaStream has consistently denied that its decision to move its factory was motivated by BDS.

global, Palestinian-led BDS movement for Palestinian rights.”⁹²

Another tactic used by the BDS movement, which serves both as an excuse to continue BDS campaigns against vulnerable companies even after “victory,” and as a potential method for financial gain, is the demand for “reparations.” A company that fully complies with BDS demands implicitly recognizes the validity of the accusations made by the BDS movement against it. It will, therefore, likely become subject to BDS demands and legal actions seeking reparations.

For example, in September 2015, the BNC celebrated the French corporation Veolia’s full capitulation to the demands of the BDS movement. It declared “The sale of [Veolia’s] stake in the Jerusalem Light Rail project ends all of Veolia’s involvement in the Israeli market, including all projects that violate international law and the human rights of the Palestinian people.”⁹³ BNC Coordinator Mahmoud Nawajaa stated that “Veolia’s withdrawal from Israel sets an example to all companies that are complicit in Israel’s human rights violations.”

However, Nawajaa added: “We call for legal action, by specialized organizations, against Veolia to compel it to pay reparations to the Palestinian communities adversely affected by its infringements of international law.”⁹⁴

A June 2017 announcement by the BNC shows that this demand for reparations was not just a one-time statement made in the exuberance of a BDS victory, but an ongoing effort. The announcement, regarding a BDS campaign in the Netherlands against an Israeli transport company, noted:

Veolia and Connexxion [a Veolia-owned transport company] have ended their complicity with Israel’s violations of Palestinian human rights, but have yet to pay reparations to the Palestinian communities they harmed, and campaigners are still demanding that they do so.⁹⁵

92 Barghouti also declared, in a somewhat implausible manner given the announcement of the 3.2 billion-dollar acquisition, that it was clear that “violating the Palestinian BDS call...is also bad for business”. <https://bdsmovement.net/news/%E2%80%9Ccsodastream-still-subject-boycott%E2%80%9D>

93 <https://bdsmovement.net/news/bds-marks-another-victory-veolia-sells-all-israeli-operations>

94 BNC’s Europe Coordinator, Riya Hassan, provided another justification for continued BNC participation in anti-Veolia campaigns, despite the victory, explaining: “Veolia is still a target for union activists, environmentalists and anti-privatization campaigners, due to its record of anti-labour policies and involvement in the privatization of public water. All those still being affected by Veolia’s policies and struggling for accountability and reparations can continue to count on our solidarity. The BDS movement takes cross-struggle solidarity to heart.”

95 <https://bdsmovement.net/node/19164>

The Hewlett Packard (HP) company has also been subject to a BDS movement demand for reparations. An April 2019 BNC press release stated, “HP has provided services to Israeli Navy...has maintained the Basel system...has also maintained record systems for Israeli prisons. We demand reparations for these past contracts that facilitated Israel’s inhuman violations and crimes.” <https://bdsmovement.net/news/victory-boycott-hp-campaign-netherlands-trade-union-fnv-drops-hp-partner-its-member-offers>

Manufacturing artificial successes to meet the demand for constant “victories”:

The BDS movement’s need to constantly produce victories leads it to manufacture and claim victories even when publicly-available information shows that such claims are false. One example described above is the claim of success in the case of HSBC’s divestment from Elbit, even after the company explained clearly that the decision had nothing to do with BDS.

At other times, the BDS movement’s “creativity” in manufacturing victories is even more pronounced. A prime example is the case of the BDS movement’s campaign against Adidas for its sponsorship of the Israel Football Association (IFA).

In July 2018, the BNC released a festive “victory” press release under the heading “Team Justice Scores. Adidas No Longer Sponsoring Israel Football Association (IFA).”⁹⁶ The victory declaration was based on a statement posted on a sports sponsorship website, announcing that Puma had replaced Adidas as the IFA’s sponsor.⁹⁷ The BNC press release provided a narrative that identified the starting point of the campaign that led to Adidas’ decision as a Palestinian boycott call from March 2018. The release explained:

Last March [March 2018], over 130 Palestinian football clubs called on the German sportswear manufacturer to end its sponsorship of the IFA over its complicity with the oppression of the Palestinian people. A spirited global campaign followed, with human rights supporters around the world calling on Adidas to end its sponsorship of matches on stolen Palestinian land. In June, over 16,000 signatures on an international petition were delivered to Adidas satellite headquarters in Amsterdam.

The BNC and the “Palestinian Campaign for the Academic and Cultural Boycott of Israel” (PACBI) immediately called to replicate the “successful” campaign against the IFA’s new sponsor, Puma. The BNC’s Puma campaign webpage explains as well that, “In July 2018 it was announced that Adidas was no longer sponsoring the IFA following an international campaign and the delivery of over 16,000 signatures to Adidas headquarters.”⁹⁸

However, what the BNC and PACBI fail to mention is that already in November 2017, four months before the call by Palestinian football clubs and the “spirited global campaign” which supposedly followed, the IFA had announced that it planned to switch its sponsor from Adidas to Puma for purely professional reasons.⁹⁹

This raises two possibilities. The first is that the BNC, through one of its Israeli collaborators who frequently provide translations from the Hebrew media, picked up the IFA’s 2017 announcement of its planned switch from Adidas to Puma. Since this announcement was only reported at the time on Israeli Hebrew-language sports news websites, the BNC could have been reasonably sure that it would not have come to the attention of the BDS movement target audiences. The BNC then initiated the March 2018 call by Palestinian football clubs, in order to be able to celebrate a victory once the planned change in sponsor actually took place.

96 <https://bdsmovement.net/news/team-justice-scores-adidas-no-longer-sponsoring-israel-football-association>

97 <https://sponsorship.sportbusiness.com/news/puma-returns-to-israel-football-association/>

98 <https://bdsmovement.net/boycott-puma>

99 <https://www.one.co.il/Article/301319.html>

A second possibility is that the BNC did not know of the planned change in sponsorship, launched the campaign against Adidas, and then chose to ignore both Adidas' denial that the sponsorship change was connected to BDS¹⁰⁰ and Israeli reports that pointed out that the decision had already been announced in 2017.

In any case, it is clear that the BNC hopes that its supporters, and perhaps Puma itself, will believe the inaccurate reports that Adidas bowed to BDS movement pressure, thereby increasing motivation among BDS activists to pursue the Puma campaign.

100 <https://www.i24news.tv/en/news/israel/society/180894-180803-adidas-says-bds-not-behind-end-of-israel-football-sponsorship>

Adoption of BDS virtue-signaling when actual boycotts would be overly inconvenient:

The ongoing campaign against Hewlett Packard (HP) (which has split into several companies), appears to be an exception to the rule of BDS targeting of companies that have shown themselves susceptible to pressure. To the best of this author's knowledge, HP companies have not engaged BDS groups and are ignoring their demands. Company executives have expressed that the BDS campaign has not had any tangible impact on HP.

It appears most likely that the BDS movement's focus on HP is due to the widespread use of the company's products by individual consumers, academic institutions, and other civil society bodies. That is, the goal of the campaign against HP is not actually to get people to boycott HP, but to enable people to signal their participation in the boycott campaign on a personal or local level. This understanding is borne out by Nada Elia, a prominent U.S. based BDS activist and member of the Steering Collective of the U.S. Campaign for the Academic and Cultural Boycott of Israel (USACBI), which is linked to PACBI. She notes:

Hewlett-Packard is one of the main targets of the global BDS movement. Those of us in the US who have an HP laptop or printer – and we are many – generally post a sticker on it saying: "This is my last HP," not only to express our disapproval of the company's policies but also to start conversations about solidarity with Palestine.¹⁰¹

Similarly, a website promoting church BDS, declares, with regards to the campaign to boycott HP:

Do you have an HP device now? You don't have to throw it out to support the boycott! Put a label over the HP logo that reminds you and tells others about your support for the boycott.¹⁰²

The campaign to boycott HP is not so much about boycotting HP as it is about BDS virtue signaling. In such a case, the application of stickers replaces actual purchasing decisions.

It appears that the BDS movement intends to expand the use of this signaling exercise in other campaigns. For example, in the context of its campaign against PUMA, PACBI reassures owners of Puma gear: "Did you purchase gear before learning of the call from Palestinian teams and athletes to #BoycottPuma. Here's a solution. Just add "boycott" above the Puma logo!"¹⁰³

PACBI explains that:

Supporters of Palestinian human rights who had already purchased Puma gear, have been rebranding their Puma clothing. By writing "Boycott" over the Puma logo, they are advertising their support [for] the call from Palestinian athletes.¹⁰⁴

Such Puma gear owners are not actually choosing to boycott Puma, but they are advertising that they think it would be virtuous to do so.

101 <https://www.middleeasteye.net/opinion/bds-targets-may-differ-our-goal-same>

102 https://www.kairosresponse.org/hp_boycott.html

103 <https://twitter.com/PACBI/status/1152504423752589314>

104 <https://bdsmovement.net/rebrand-puma>

Framing boycotts in “settlement language”, despite official opposition, while expanding the definition of “settlement-related activity”:

The Palestinian BDS movement is officially opposed to the idea of focusing on “settlement boycotts,” i.e., on boycotts of products originating from, or activities occurring over, the Green Line. This is because, according to BDS movement ideology, a focus on Israel’s presence over the Green Line distracts from Israel’s other “cardinal sins” of not allowing Palestinian refugees and their descendants to return to Israel, and continuing to maintain its nature as a Jewish nation-state.

Nevertheless, the BDS movement, due to its preference for a pragmatic approach that facilitates the production of victories, has tended to focus de facto on settlement-related boycotts. BDS movement leaders realize that while the mainstream international community does not support a full boycott of Israel (or the goal of ending Israel’s existence as a Jewish state), there are audiences closer to the mainstream that are more receptive to the idea of settlement boycotts.

However, as noted earlier in the case of the UNHRC blacklist, the BDS movement has adopted a sophisticated ploy of expanding and blurring the boundaries of the definition of “settlement-related” activity. In this way, it can advance campaigns aimed at undermining Israel’s entire financial system and economy, while still framing these campaigns (primarily when speaking to Western audiences) in the language of opposition to the settlements.

The 2005 “Palestinian Civil Society Call for BDS” (which serves as the foundational text for the BNC) demands a full boycott of Israel. It states:

We, representatives of Palestinian civil society, call upon international civil society organizations and people of conscience all over the world to impose broad boycotts and implement divestment initiatives against Israel similar to those applied to South Africa.¹⁰⁵

PACBI, in an April 2012 document, explains the BDS movement’s opposition to settlement boycotts, which it believes to be a Zionist plot to undermine BDS:

Some so-called left-leaning Zionists have recently tried to muddy the waters by suggesting a Zionist-friendly boycott to undermine the Palestinian-led BDS movement. A ‘Zionist BDS’ is as logical as ‘racist equality!’ BDS is not about saving Israel as an apartheid state, giving up some occupied lands that are densely populated by Palestinians to make Israel a more pure apartheid, and to prolong the life of this apartheid for several more years. Of course, PACBI and the BDS National Committee (BNC) advocate a complete boycott until Israel ends its three-tiered system of oppression, not simply its occupation of the West Bank and Gaza.¹⁰⁶

However, considering the pragmatic approach adopted by the BNC, and its search for low-hanging fruit, it has tended to focus on campaigns that it can frame as related to Israel’s presence over the Green Line. As PACBI goes on to explain:

105 <https://bdsmovement.net/call>

106 <http://pacbi.org/etemplate.php?id=1850>

Still, BDS is all about context sensitivity. This means that supporters of BDS in any particular context decide what to boycott or divest from, how to pursue their local goals, how to build alliances, and how to campaign--with sensitivity to their own political, cultural, and organizational contexts. Partners may decide to boycott only companies implicated in Israel's occupation, and that is perfectly fine if done tactically, not out of a principled rejection of a *full* boycott when the circumstances allow it.

The BNC website, in response to the Frequently Asked Question: "Does the BDS movement call for a boycott of all Israeli products or just products and companies from illegal Israeli settlements?" – answers that:

The BDS movement calls for a boycott of all Israeli products. However, some of our biggest campaigns are against companies that operate in illegal Israeli settlements in the Occupied West Bank. This is simply because campaigns targeting these companies are, at this stage, more capable of winning widespread support and succeeding. As our movement grows, so do our ambitions and the BDS movement is currently in the process of moving away from campaigns focused mainly on illegal Israeli settlements.¹⁰⁷

However, the BDS movement, and in particular the more sophisticated legal actors involved in the movement, such as Al-Haq,¹⁰⁸ have adopted the tactic of framing campaigns in the language of opposition to activity over the Green Line, while choosing targets and formulating demands aimed at undermining Israel as a whole.

One prime example of this tactic is the campaign against Israel's banks. The arguments made by the BDS movement reference Israel's presence over the Green Line, and seek to portray the banks' role as vital to the settlements' existence. For example, the BNC describes Israeli banks as "the backbone of Israel's illegal settlement enterprise."¹⁰⁹ However, the obvious goal of a campaign to have all of a country's major banks blacklisted is the undermining of that country's entire financial and economic system.¹¹⁰

This is similar to the tactic used in the context of the UNHRC blacklist, of maintaining the "settlement" framing, but expanding the definition of activities "contributing" to Israeli settlements to include such expansive categories as "captivity of the Palestinian financial and economic markets" and "practices that disadvantage Palestinian enterprises."

With regards to the BDS movement campaign against Israeli banks, the campaign's trajectory suggests that engagement on the part of the counter-BDS community, aimed at presenting an accurate picture of the banks' activities, the relevant legal frameworks, and the banks' Corporate Social Responsibility (CSR) efforts, can be successful in countering BDS. Most of the BDS movement's initial successes in this arena have been quietly rolled back.

The BDS campaign against Israeli banks initially achieved several successes in the period of 2013-2014. These successes stemmed largely from the fact that the relevant parts of the counter-BDS community, including the relevant governmental and financial bodies, were caught somewhat unprepared. In January 2014, the second-largest Dutch pension fund, PGGM, decided to add five Israeli banks to its investment

107 <https://bdsmovement.net/get-involved/what-to-boycott>

108 While the BNC is fully active in the economic, financial, and Corporate Social Responsibility (CSR)-related BDS campaigns, the more effective proponents of these campaigns are the legal-oriented actors and organizations that are part of the BDS movement. Prominent among these is Al-Haq, and particularly its Director-General, Shawan Jabarin, a convicted PFLP terrorist and legal activist who also serves as Secretary-General of the French NGO FIDH.

109 <https://bdsmovement.net/news/new-report-french-insurer-axa-complicit-israel%E2%80%99s-war-crimes>

110 As noted above, in the ECFR's "Differentiation" report, the authors, while allegedly strictly focusing on Israel's activities over the Green Line, suggest that the EU may be required to cut off Israeli banks from their European counterparts. Again, the implications for the entire Israeli financial system are clear.

exclusion list. In February 2014, Denmark's largest bank, Danske Bank, decided to include Israel's Bank Hapoalim on its exclusion list due to alleged settlement-related activities.

These decisions led Israeli government actors, the Israeli banking community, and NGOs involved in the CSR arena, to make a more concerted effort to engage the international financial community in general, and the CSR community in particular. The aims of this engagement were, as mentioned, to present an accurate picture of the banks' activities and regulatory environment, the relevant Israeli and international legal frameworks, and the banks' CSR efforts.

The result has been the reversal of most of the decisions to blacklist Israeli banks for reasons related to their alleged involvement in settlement activities. Following the PGGM decision, an intensive effort was made to engage the Netherlands' largest pension fund, ABP, which was, like PGGM, targeted by BDS. Following this engagement, ABP decided to reject the BDS demand to blacklist the banks, reasoning that, "these banks themselves do not act in breach of international laws and regulations, and there are no judicial rulings that should lead to their exclusion."¹¹¹

In February 2016, Danske Bank announced the reversal of its decision to blacklist Israeli banks, with the head of its Responsible Investments unit explaining:

It is our understanding that the bank handles the dilemmas associated with running a bank in Israel in a good and responsible manner, and therefore we see no reason to continue to exclude them from our investment universe.¹¹²

As of 2019, PGGM had also removed the Israeli banks from its exclusion list.

For the most part, Israeli companies that remain on CSR-based exclusion lists are those involved in cluster munitions or other military-related activities, which are subject to divestment campaigns and policies not related to the BDS movement.

111 <https://www.ft.com/content/31c645f4-8f31-11e3-9cb0-00144feab7de>

112 <https://old.danwatch.dk/en/nyhed/danske-bank-dropper-eksklusion-af-bank-hapoalim/>

Complementary tactics such as bullying and threats, and indirect methods such as investment screens:

In cases where BDS finds itself unable to convince its targets to boycott Israel or Israel-invested companies, it often adopts other complementary tactics. One tactic is the use of bullying, intimidation, and threats. For example, senior executives at G4S received threats to their personal phones and emails during the campaign to force the security company out of Israel.

Another tactic along these lines is the disruption of a company's Annual General Meetings and other events. The goal of such disruptions is to cause a "headache" for the company's board members and executives, and lead them to adopt an approach of "just make it go away." These tactics of bullying and threats are also particularly pervasive in BDS campaigns against musicians and other artists.

In other cases, where it is assumed that institutional or political decision-makers may balk at the idea of divesting from a company doing business with Israel, BDS activists adopt a more indirect tactic of promoting investment screens.¹¹³ The BDS campaign's goal in using this tactic is to avoid forcing decision-makers to take the at-times unpopular decision to sanction companies while the public spotlight is on them. Instead, the decision as to which companies to blacklist is relegated to settings that are less in the public eye.

113 Among the most prominent advocates of this tactic are the American Friends Service Committee and their point person on this issue, Israeli BDS activist and "Who Profits" co-founder Dalit Baum.

BDS

Anti-Semitism





Sign comparing Israel to Nazis at January 10, 2009 anti-Israel rally in Toronto, Canada.

One prominent question that has been debated regarding the BDS campaign in general, and the BDS movement, in particular, is whether it should be considered anti-Semitic.¹¹⁴

Two points on this issue should be clear and not subject to debate. The first is that several of the hallmark positions, principles, and rhetorical devices of the BDS movement are considered anti-Semitic under the most widely-accepted international definition of anti-Semitism.

The second is that prominent BDS figures and activities have repeatedly crossed the line to explicitly anti-Semitic actions and rhetoric. In fact, it appears that BDS often serves to mainstream and legitimize the use of anti-Semitic tropes.

Among the hallmarks of the BDS movement are that it is anti-Zionist, that it believes that the State of Israel is an inherently racist endeavor and that it denies the right of the Jewish People to exercise self-determination anywhere in the territory between the Jordan River and the Mediterranean Sea.¹¹⁵

In addition, central BDS movement figures frequently make demands of Israel that are not made of other states and use Israel's alleged lack of compliance with such demands as a tool to demonize Israel. They also frequently compare Israeli policy and actions to those of the Nazis.

These hallmarks are indicators of anti-Semitism, according to the most widely accepted definition, which is fast becoming an international consensus. This definition, formulated by the International Holocaust Remembrance Alliance (IHRA), an intergovernmental organization that includes representatives of 31 governments, and independent experts, states: "Anti-Semitism is a certain perception of Jews, which may be expressed as hatred toward Jews." The organization explains that:

To guide IHRA in its work, the following examples may serve as illustrations: Manifestations might include the targeting of the State of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as anti-Semitic.

The IHRA then provides a list of 11 "contemporary examples of anti-Semitism in public life, the media, schools, the workplace, and in the religious sphere." Among these examples are core characteristics of the BDS movement, including:

- "Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor."
- "Applying double standards by requiring of it a behavior not expected or demanded of any other

114 For example, in July 2019, the New York Times ran a lengthy article on BDS under the headline "Is B.D.S. anti-Semitic?" See <https://www.nytimes.com/2019/07/27/world/middleeast/bds-israel-boycott-antisemitic.html>

115 As described in the New York Times article on BDS anti-Semitism: "In an interview, Omar Barghouti, a top B.D.S. spokesman...Asked if that means Jews cannot have their own state, he said, 'Not in Palestine.'" See <https://www.nytimes.com/2019/07/27/world/middleeast/bds-israel-boycott-antisemitic.html>

democratic nation.”

BDS movement figures have also repeatedly acted in accordance with at least two other examples on the IHRA list, namely:

- “Drawing comparisons of contemporary Israeli policy to that of the Nazis.”¹¹⁶
- “Using the symbols and images associated with classic anti-Semitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.”

The IHRA definition, including its examples, has been adopted by a growing number of countries, states, municipalities, law enforcement agencies, universities, student associations, unions, and other civil society bodies, and is evolving into an international consensus.¹¹⁷ In addition to the adoption of IHRA, parliaments, and leaders in several countries, including Germany and France, have also expressed the view that BDS is anti-Semitic.

In the case of the **United States**, the U.S. State Department website contains the IHRA definition and examples in full, and notes that “the United States uses this working definition to guide its foreign policy action and encourages other governments and international organizations to use it as well.”¹¹⁸

This definition is also used by the U.S. Department of Education’s Office of Civil Rights (OCR). In an August 2018 letter from the Education Department’s Assistant Secretary for Civil Rights, Kenneth Marcus, he explained:

In determining whether students face discrimination on the basis of actual or perceived Jewish ancestry, we rely where appropriate upon widely established definitions of anti-Semitism. The IHRA working definition is widely used by government agencies, including the U.S. Department of State, and is used by OCR as well.¹¹⁹

The letter then goes on to quote the definition and accompanying examples in full.

In May 2018, bi-partisan Congressional sponsors reintroduced the “Anti-Semitism Awareness Act” in the House and Senate, which would direct the Department of Education to make use of the IHRA definition. Similar legislation passed the Senate in 2016 but did not advance in the House at the time.

In December 2019, President Trump issued an Executive Order declaring that:

In enforcing Title VI, and identifying evidence of discrimination based on race, color, or national origin, all executive departments and agencies charged with enforcing Title VI shall consider the following...the non-legally binding working definition of anti-Semitism adopted on May 26, 2016, by the International Holocaust Remembrance Alliance... and the ‘Contemporary Examples of Anti-Semitism’ identified by the IHRA, to the extent that any examples might be useful as evidence of discriminatory intent.

116 For example, one of the BDS movement’s most prominent propagandists, Ali Abunimah, declared, “Supporting Zionism is not atonement for the Holocaust, but its continuation in spirit.”
<https://twitter.com/aliabunimah/status/28726521563?lang=en>

117 BDS groups like to argue that at the time of the adoption of the IHRA definition by 31 countries at the May 2016 IHRA conference in Bucharest, the Plenary did not explicitly vote on the examples. However, with regards to the question of the international consensus regarding the IHRA definition, this is beside the point. A growing international consensus regarding the definition and examples has developed since the 2016 IHRA Plenary, regardless of the specific vote at the meeting.

118 <https://www.state.gov/defining-anti-semitism/>

119 See <https://www.politico.com/f/?id=00000165-ce21-df3d-a177-cee9649e0000>

Counter anti-Semitism legislation passed by the States of Florida and South Carolina contains examples taken from both the IHRA definition and the original U.S. State Department definition, which utilized the “3D” test for identifying when criticism of Israel crosses the line to anti-Semitism.¹²⁰ According to the 3D approach, criticism of Israel crosses the line to anti-Semitism when it demonizes, delegitimizes, or uses double standards to attack Israel.

In December 2017, the Bal Harbour Village Council became the first municipality in the United States to adopt the State Department’s anti-Semitism definition and to direct its local law enforcement to use the definition in investigating possible hate crimes. This led the Miami-Dade County Chiefs of Police Association (representing police in 34 cities) to unanimously adopt the State Department anti-Semitism definition for use when investigating and prosecuting anti-Jewish crimes.¹²¹

The **United Kingdom**, as noted above, formally adopted the IHRA working definition in December 2016. The UK House of Commons Library paper on the adoption states explicitly, with regards to the question, “Did the UK Government also adopt the IHRA’s 11 examples of anti-Semitism?”:

Yes. Although the UK Government’s original statement announcing the adoption of the IHRA definition did not mention its 11 “contemporary examples,” it is clear they form part of Government policy.¹²²

The House of Commons Library then cites several governmental statements demonstrating that the government has indeed adopted the IHRA list of examples.

The IHRA definition has been adopted by over 180 local councils in the UK, with nearly all councils also including the accompanying examples. In September 2018, the UK Labour Party’s National Executive Council adopted the IHRA definition with its examples, while adding the caveat that the adoption was not intended to undermine freedom of expression regarding Israel or the Palestinians.¹²³

The adoption of the IHRA definition by the UK government led to Israel Apartheid Week events being canceled at several UK universities,¹²⁴ and its adoption by local councils may have led to an event organized by a virulently pro-BDS organization being denied the use of public facilities (although the event still took place).¹²⁵

Additional UK bodies that have adopted IHRA (either independently or as a result of the government’s adoption) include: The Crown Prosecution Service, the College of Policing, universities such as Kings College London and the University of Bristol, the National Union of Students, trade unions such as GMB and Unison Labour Link, the Liberal Democrats, and the Church of Scotland.

In July 2019, **Canada** announced the adoption of the IHRA definition as part of its new anti-racism strategy.¹²⁶ While the document presenting the strategy does not explicitly address the question of the IHRA examples, both mainstream Canadian media, and pro and anti-Israel groups and figures, interpreted

120 This definition appeared on the State Department’s website from 2010-2018.

121 <https://www.algemeiner.com/2018/03/13/miami-dade-county-police-chiefs-adopt-state-department-definition-of-antisemitism/>

122 <https://commonslibrary.parliament.uk/home-affairs/communities/uk-governments-adoption-of-the-ihra-definition-of-anti-Semitism/>

123 <https://www.theguardian.com/politics/2018/sep/04/labour-adopts-ihra-antisemitism-definition-in-full>

124 <https://www.thejc.com/news/uk-news/apartheid-week-ban-heralds-%EF%AC%81ghtback-1.433185>

125 <https://electronicintifada.net/blogs/asa-winstanley/anti-semitism-definition-behind-secret-ban-aid-palestinian-children>

126 <https://www.canada.ca/content/dam/pch/documents/campaigns/anti-racism-engagement/ARS-Report-EN-2019-2022.pdf>

the adoption as including the examples. This is indeed the most logical conclusion for several reasons. The first is that the strategy document, after providing the IHRA definition, states, without any caveats, that “for further information, visit” the IHRA website, and directs readers to the page on which appear the definition and examples.¹²⁷

Additionally, such a conclusion would be most consistent with statements made by Canadian Prime Minister Justin Trudeau. For example, in January 2019, he declared:

You have movements like BDS that singles out Israel, that seeks to delegitimize and, in some cases, demonize. When you have students on campus dealing with things like Israel Apartheid Week, that makes them fearful of attending campus events because of their religion in Canada. We have to recognize that there are things that are not acceptable not because of foreign policy concerns but because of Canadian values. It is not right to discriminate or make someone feel unsafe on campus because of their religion, and unfortunately, the BDS movement is often linked to those kinds of frames.¹²⁸

In October 2015 Trudeau similarly stated:

I’m opposed to the BDS movement. I think that it’s an example of the new form of anti-Semitism in the world, as Irwin Cotler points out, an example of the three “Ds”: demonization of Israel, delegitimization of Israel, and double standard applied toward Israel.¹²⁹

In addition to the United States, UK, and Canada, the working definition has been adopted or endorsed by parliaments and governmental bodies in **Austria, Romania, Germany, Bulgaria, Lithuania, North Macedonia, the Netherlands, Slovakia, Moldova, Czech Republic, Greece, Cyprus, Hungary, France, Sweden, Slovenia, Belgium, Luxemburg, Italy, Serbia, Uruguay** and **Israel**.¹³⁰ In the UK, it has also been adopted by the **Scottish Parliament** and **Welsh Assembly**.

The **European Union** has adopted the IHRA definition as well. In January 2019, the EU stated:

The European Commission, the European Parliament, and the Council all recognise this definition [IHRA] as a useful guiding tool for civil society, law enforcement authorities and education facilities to effectively recognise and fight all forms of anti-Semitism. The European Commission, in line with other international organisations, is actively using this definition in its work, in particular for education and training purposes.¹³¹

In some cases, the adoption of IHRA did not explicitly address the question as to whether or not the accompanying examples were included. However, in others, the governments or parliaments did clarify that the examples were included, or affirmed the applicability of the definition to anti-Semitism expressed as the targeting of Israel.

For example, the **Scottish Government**, in response to a freedom of information request, stated that, “The Scottish Government formally adopted the IHRA definition of anti-Semitism in June 2017, including all of the examples of anti-Semitism which accompany the definition.”¹³²

127 See p. 21 and footnote 2 in “Building a Foundation for Change: Canada’s Anti-Racism Strategy 2019-2020”

128 <https://www.jpost.com/BDS-THREAT/Canadian-PM-Justin-Trudeau-defends-comparison-of-BDS-to-anti-Semitism-577683>

129 <https://www.cjnews.com/news/canada/qa-justin-trudeau-opposed-bds-movement>

130 <https://www.holocaustremembrance.com/working-definitions-and-charters>

131 https://europa.eu/rapid/press-release_MEMO-19-542_en.htm

132 <https://www.gov.scot/publications/foi-201900004948/>

The November 2018 resolution of the **Slovakian parliament** supporting the adoption of the IHRA definition clarified that, “the State of Israel can also be seen as a Jewish community.”¹³³

Similarly, following the **Czech Parliament’s** January 2019 resolution supporting the adoption of the IHRA definition, Czech lawmakers adopted a second resolution in October 2019 condemning “all manifestations of anti-Semitism directed against individuals, religious institutions, organizations as well as the State of Israel.” The resolution further rejected “any questioning of the State of Israel’s right of existence and defense” and “all activities and statements by groups calling for a boycott of the State of Israel, its goods, services, or citizens.”¹³⁴

Adding to the international consensus regarding the anti-Semitic nature of BDS, or of its hallmark traits, are the resolution of the **German Parliament** of May 2019, and statements by French leaders and Parliament.

The German Parliament resolution passed in May 2019 notes that:

According to the Working Definition of the IHRA, anti-Semitism is defined as a particular perception of Jews, which can be expressed as hatred towards the Jews. Furthermore, the State of Israel, which can be understood as a form of Jewish collective, can be subjected to such attacks.

The Resolution declares:

For many years the “Boycott, Divestment and Sanctions” - movement (in short: BDS) also in Germany, calls for the boycott of Israel, against Israeli products, services, Israeli artists, academics, and athletes. The comprehensive call for boycott leads in its radicalism to a stigmatization of Israeli citizens and citizens of Jewish faith as a whole. This is unacceptable and must be most strongly condemned. The argumentation patterns and methods of the BDS movement are anti-Semitic. The calls of the campaign to boycott Israeli artists as well as ‘Don’t buy’ stickers on Israeli goods, which shall discourage from the purchase, remind us of the most terrible phase of German history. ‘Don’t buy’-stickers of the BDS movement on Israeli products inevitably kindle memories of the Nazi (NS) – parole ‘Kauf nicht bei Juden!’ (Don’t buy from Jews) and respective defacements on facades and shop windows.

In the case of **France**, President Emmanuel Macron, in announcing in February 2019 that France will adopt the IHRA definition, declared, “Anti-Zionism is one of the modern forms of anti-Semitism.”¹³⁵ In December 2019, the French National Assembly adopted a resolution which declared its belief:

That the operational definition used by the International Holocaust Remembrance Alliance allows for the most precise designation of what contemporary anti-Semitism is. It considers it an effective instrument for combating anti-Semitism in its modern and renewed form, in that it encompasses manifestations of hatred toward the State of Israel justified solely by the perception of the latter as a Jewish collective.¹³⁶

In **Spain**, the first resolution to adopt IHRA was tabled by a representative of the Ciudadanos (Citizens) Party in the regional parliament of Valencia in December 2019.

It is clear that central elements and positions of the BDS movement are anti-Semitic according to the IHRA definition. It is equally clear that BDS and anti-Zionist activity has often crossed the line to classic anti-Semitism and targeting of Jews.

133 <https://domov.sme.sk/c/20972229/danko-uspel-poslanci-prijali-pracovnu-definiciu-antisemitizmu.html>

134 <https://www.timesofisrael.com/czech-lawmakers-pass-resolution-condemning-bds-movement/>

135 <https://www.reuters.com/article/us-france-antisemitism/frances-macron-says-anti-zionism-is-a-form-of-anti-semitism-idUSKCN1QA1GL>

136 <http://www.bicom.org.uk/news/french-parliament-adopts-ihra-definition-of-antisemitism/>

To give just a few examples:

- Spanish BDS activists targeted Jewish American singer Matisyahu, who was invited to perform at the 2015 Rototom Sunsplash reggae festival. Following the BDS “campaign of pressure, coercion, and threats,”¹³⁷ as described by the festival’s organizers, Matisyahu was asked to denounce Israel and express support for a Palestinian state as a condition for being allowed to perform. He was the only invited artist who was asked to make a political declaration in order to participate. Following an international outcry, the festival organizers eventually dropped this demand.
- Activists with the leading U.S. BDS campus group, Students for Justice in Palestine, have repeatedly made anti-Semitic statements, including praising Hitler.¹³⁸ SJP Co-founder Hatem Bazian told a Berkeley rally, “Take a look at the type of names on the buildings around campus — Haas, Zellerbach — and decide who controls this university.” Bazian also tweeted blatantly anti-Semitic images, including of an “ultra-orthodox Jew” proclaiming, “I can now kill, rape, smuggle organs & steal the land of Palestinians Yay #Ashke-Nazi.”¹³⁹
- As described in an earlier section of this study, BDS activists in South Africa have called to “shoot the Jews,” put a pig’s head in the kosher section of a supermarket, and threatened the South African Jewish Board of Deputies.
- In France, anti-Israel protests have turned into assaults on Jewish synagogues and kosher grocery stores, with protestors chanting “death to Jews.”¹⁴⁰
- Perhaps the most prominent spokesperson of the cultural BDS campaign, Roger Waters, in attempting to explain why more American musicians have not supported his call for a boycott of Israel, opined, “The Jewish lobby is extraordinarily powerful here.” He also has ended his concerts by floating a giant inflatable pig decorated with symbols of “evil” into the crowd, on which the only religious symbol was the Jewish Star of David.
- BNC leaders have also regularly promoted anti-Semitic tropes. Mahmoud Nawajaa, BNC Coordinator, promoted an anti-Semitic podcast entitled “About the struggle in America against Zionism, the foreign bankers, lobbyists, and corporations.” At a May 2019, BNC-led rally in Ramallah against the German counter-BDS resolution, BDS leader Khalid Mansour held up a sign showing a dog with a Jewish Star of David around its neck and bloody fangs. BNC and PNIF leader, Salah Khawaja, shared an image on Facebook depicting Prime Minister Netanyahu holding a bloody butcher knife and flanked by ultra-Orthodox Jews.

As noted, these are only a few of the many instances in which BDS and attacks against Israel have crossed the line to blatant anti-Semitism.¹⁴¹ There are also indications that right-wing anti-Semitic and neo-Nazi

137 <https://www.facebook.com/rototomsunsplashofficial/posts/10153366496516743>

138 Such statements include: “Hitler had a lot of great ideas” and “every time I read about Hitler, I fall in love all over again.” Many of these tweets have been documented by the Canary Mission website. See <https://canarymission.org/> For a discussion of the motives of those opposed to the website’s documentation of explicitly anti-Semitic and violent statements, see <https://besacenter.org/perspectives-papers/canary-mission-bds/>

139 See images at <https://www.tabletmag.com/scroll/250354/co-founder-of-students-for-justice-in-palestine-shares-insanely-anti-semitic-memes-offers-worlds-least-convincing-apology>

140 <https://www.nytimes.com/2014/07/29/world/europe/gaza-conflict-seen-sparking-anti-semitic-attacks-in-france.html>

141 Israel’s Ministry of Strategic Affairs documented more than 100 examples of BDS anti-Semitism in its September 2019 report, “Behind the Mask: The Anti-Semitic Nature of BDS Exposed.” The report is available at <https://4il.org.il/wp-content/uploads/2019/09/MSA-report-Behind-the-Mask.pdf>.

Further examples are documented in the December 2019 report by StopAnti-Semitism.org and Zachor Legal Institute entitled, “The New Anti-Semites”. Available at <https://www.stopantisemitism.org/>

groups are increasingly adopting BDS rhetoric and tactics.¹⁴²

The BDS movement is quite concerned by the growing exposure of the anti-Semitism at the core of its ideology, rhetoric, and tactics. In March 2017, the BNC released a statement claiming that in:

Adhering to the UN definition of racial discrimination, the BDS movement does not tolerate any act or discourse which adopts or promotes, among others, anti-Black racism, anti-Arab racism, Islamophobia, anti-Semitism, sexism, xenophobia, or homophobia.¹⁴³

Somewhat ironically, the BNC notes in the same statement that it is:

Guided by the inclusive agenda of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in 2001 in Durban, South Africa.

It has been widely documented that the NGO Forum at the 2001 World Conference against Racism in Durban was marked by gross anti-Semitism. In the words of then UN Commissioner for Human Rights, Mary Robinson:

There was horrible anti-Semitism present -- particularly in some of the NGO discussions. A number of people came to me and said they've never been so hurt or so harassed or been so blatantly faced with anti-Semitism.¹⁴⁴

In January 2019, apparently due to its inability to stem the growing discourse around BDS anti-Semitism, the BNC released a "Statement on Affiliation with the BDS movement and the Use of the BDS Acronym."¹⁴⁵ The statement noted that "there have been a few unusual cases of small groups that use the BDS name or even the BNC logo, without any coordination with the BNC, while violating the BDS movement's ethical principles. "

The BNC declared:

Any group that is affiliated with a group or organization that is known to tolerate views that conflict with the BDS movement's ethical guidelines or anti-racism principles cannot be part of the BDS movement. If a group undermines any of the ethical and anti-racist principles of the BDS movement, the BNC will privately ask the group to drop the BDS acronym and to stop presenting itself as part of the BDS movement. If the group does not heed the BNC request within a specified deadline, the BNC will publicly censure the group and distance the BDS movement from it.

However, when in July 2019, UN Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, asked the BNC for "any example where you condemn or sanction such act within the movement,"¹⁴⁶ the BNC could only produce one example, of a statement they put out on their Arabic Facebook page in which they condemned a small esoteric group calling itself "BDS Casablanca." It seems that none of the anti-Semitic statements and actions by BDS movement leaders or affiliated groups in the PA, United States, Europe, or South Africa were considered unacceptable or deserving of condemnation.

142 See for example <https://mosaicmagazine.com/picks/politics-current-affairs/2019/05/boycott-israel-facebook-groups-attract-neo-nazis/>, <https://www.haaretz.com/world-news/.premium-why-neo-nazis-love-the-bds-movement-so-much-1.7372611> and "The New Anti-Semites".

143 <https://bdsmovement.net/news/%E2%80%9Cracism-and-racial-discrimination-are-antithesis-freedom-justice-equality%E2%80%9D>

144 http://news.bbc.co.uk/2/hi/talking_point/forum/1673034.stm

Omar Barghouti has similarly explained that the "Durban conference was a main trigger" for launching the BDS call.

145 <https://bdsmovement.net/news/statement-affiliation-bds-movement-and-use-bds-acronym>

146 <https://bdsmovement.net/news/palestinian-bds-national-committees-responses-un-special-rapporteur-freedom-religion-or-belief>

The BNC's response to the UN Special Rapporteur also reveals the increasingly important role that "Jewish" BDS groups play in providing a fig leaf for BDS anti-Semitism. Rather than addressing BDS movement anti-Semitism directly, the BNC repeatedly resorts to referencing groups like Jewish Voice for Peace (which it describes as "the largest progressive Jewish organization in the world") and other Jewish BDS organizations and academics, as proof that its statements and positions should not be construed as anti-Semitic.¹⁴⁷

In August 2019, the BNC felt compelled to release another statement declaring that, "The BDS movement rejects alleged "support" from anti-Semites and racists of all shades." It also used this statement to attack the growing consensus around the IHRA definition as a "desperate" attempt to promote a "fraudulent definition of anti-Semitism that undermines the peaceful struggle for Palestinian rights, including BDS."¹⁴⁸

The UN Special Rapporteur, for his part, describes in his report:

Numerous reports of an increase in many countries of what is sometimes called 'left-wing' anti-Semitism, in which individuals claiming to hold anti-racist and anti-imperialist views employ anti-Semitic narratives or tropes in the course of expressing anger at policies or practices of the Government of Israel. In some cases, individuals expressing such views have engaged in Holocaust denial; in others, they have conflated Zionism, the self-determination movement of the Jewish people, with racism; claimed Israel does not have a right to exist; and accused those expressing concern over anti-Semitism as acting in bad faith.¹⁴⁹

Shaheed notes the claims that "the objectives, activities, and effects of the Boycott Divestment Sanctions (BDS) movement are fundamentally anti-Semitic," but also notes that these allegations are rejected by the BDS movement. He does stress, however, that expression "which draws upon anti-Semitic tropes or stereotypes, rejects the right of Israel to exist...should be condemned."

This statement recalls the September 2018 declaration by UN Secretary-General Antonio Guterres at a UNESCO "High-Level Event on the Power of Education for Countering Racism and Discrimination: The Case of anti-Semitism," in which he said:

Anti-Semitism has evolved, grown more complex, and adopted new guises. In more recent times, it is expressing itself in attempts to delegitimize the right of Israel to exist, including calls for its destruction, using the pretext of the situation in the Middle East to target Jews and Jewish symbols.¹⁵⁰

Given that the BDS movement undoubtedly and explicitly "rejects the right of Israel to exist" in the words of Shaheed, and "attempts to delegitimize the right of Israel to exist," in the words of Guterres, the only logical conclusion according to these UN statements is that BDS is, in fact, anti-Semitic and condemnable.

In light of the ongoing public discourse around the upsurge in anti-Semitism world-wide, and the clear connections between BDS and anti-Semitism, it is likely that the counter-BDS community will continue to encourage governments, municipalities, law enforcement, and civil society bodies to adopt definitions which encompass all forms of anti-Semitism. These definitions, such as that of IHRA, can have significant symbolic and practical effects.

147 Western commentators sympathetic to the BDS movement have also made efforts to discredit claims that BDS is anti-Semitic. For example, this appears to be the main purpose of the section on anti-Semitism in Nathan Thrall's lengthy August 2018 piece on the BDS movement in the Guardian. See <https://www.theguardian.com/news/2018/aug/14/bds-boycott-divestment-sanctions-movement-transformed-israeli-palestinian-debate>

148 <https://www.bdsmovement.net/news/bds-condemns-antisemitic-fascist-forces-germany-and-worldwide>

149 https://www.ohchr.org/Documents/Issues/Religion/A_74_47921ADV.pdf

150 <https://www.un.org/sg/en/content/sg/statement/2018-09-26/secretary-generals-remarks-high-level-event-power-education>

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ISRAEL**

STAND UP
FOR GAZA
STOP THE
KILLING



STAND UP
FOR GAZA
STOP THE
KILLING



Gaza: Stop the Massacre rally,
London, UK, May 15, 2018

BDS-Terror Connections





Palestinian militants of the Al-Nasser Saladin Brigades take part in an anti-Israel military show in Khan Younis in the southern Gaza Strip, on February 17, 2020.

Over the last several years, the manifold connections between the BDS movement and designated terrorist organizations have been revealed. The BDS terror links were first exposed in the reports of think-tanks such as the Jerusalem Center for Public Affairs,¹⁵¹ NGO Monitor,¹⁵² the Intelligence and Terrorism Information Center,¹⁵³ and the Foundation for the Defense of Democracies.¹⁵⁴ These connections were then the focus of a detailed report published by the Ministry of Strategic Affairs (MSA) in February 2019, entitled “Terrorists in Suits.”¹⁵⁵ The MSA report highlights more than 100 links between leading BDS groups and activists, and the designated terrorist organizations PFLP¹⁵⁶ and Hamas. These links include approximately 30 current and former terrorist operatives who play prominent roles in the BDS movement.

151 See for example http://jcpa.org/pdf/Unmasking_.pdf and http://jcpa.org/pdf/PACBI_unmasked_web.pdf

152 See for example <https://www.ngo-monitor.org/reports/european-funded-ngo-pflp-network/>

153 See for example <https://www.terrorism-info.org.il/en/hamas-affiliated-palestinian-britain-admitted-flotilla-project-gaza-strip-not-intended-break-siege-bring-humanitarian-aid-rather-promote-battle-hearts/>

154 See for example <https://docs.house.gov/meetings/FA/FA18/20160419/104817/HHRG-114-FA18-Wstate-SchanzerJ-20160419.pdf>

155 https://www.gov.il/en/Departments/General/terrorists_in_suits

156 The connections between leading BDS movement actors and the PFLP terrorist group came to the fore in October 2019, when the IDF arrested Samer Arabid for carrying out a PFLP terror attack in August 2019. Arabid was accused of planting and detonating an explosive device which killed 17-year-old Rina Shnerb. In addition to having served previous prison sentences for terrorist activity, Arabid has played key roles in at least two PFLP-affiliated NGOs that are part of the BDS movement -- Addameer and the Union of Agricultural Work Committees (UAWC). In December 2019, Israel subsequently arrested dozens of members of the PFLP terrorist infrastructure in the West Bank, which included Arabid and prominent PFLP leader Khalida Jarrar (who previously served as Vice-Chair of Addameer). See <https://www.jpost.com/Israel-News/Shin-Bet-arrests-50-PFLP-terrorists-thwart-upcoming-attack-611289> and <https://www.ngo-monitor.org/reports/current-and-former-ngo-employees-arrested-as-part-of-pflp-terror-cell/>

This report and others also highlight the central role played by the Palestinian National and Islamic Forces (PNIF) in the BNC. The PNIF,¹⁵⁷ which was set up during the Second Intifada to coordinate activities between the different terrorist groups, is made up of representatives of various Palestinian factions. Several of these factions, including Hamas, Palestinian Islamic Jihad, and the PFLP, are designated by the United States and EU as terrorist organizations. Today, PNIF serves primarily as a coordinating and organizing framework for political, “popular resistance,” and anti-normalization activities. In Gaza, it is one of the key organizers of the violent border riots known as the “Great Marches of Return.”

The central role played by PNIF in the BNC is demonstrated by the fact that it is the first organization to appear as a signatory to the 2005 “Palestinian Civil Society Call for BDS,”¹⁵⁸ and the first on the list of BNC Steering Committee members.¹⁵⁹ Its representatives are usually accorded “prime time” speaking spots at BNC conferences.

The findings regarding the links between BDS organizations and terrorist groups are being used by legal and pro-Israel actors to counter these organizations, primarily in the financial sphere. Information regarding the terror links and relevant legislation has been conveyed to banks, financial institutions, and payment platforms, leading to the closure of over two dozen BDS-affiliated accounts in at least six countries. The work of these think-tanks and the MSA, and the subsequent bank closures, have been widely discussed, and therefore, do not need to be repeated here. Instead, this section will focus on additional trends and steps related to the connection between BDS and terror.

To date, pro-Israel groups have largely focused on conveying information regarding BDS-terror connections to financial bodies, which are subject to strict anti-terror and money laundering regulations and therefore tend to be risk-averse. To increase the impact of these research findings, the counter-BDS community should expand its engagement on this issue with national and subnational governmental bodies, such as state and municipal policy-makers, national and local law enforcement, intelligence and counter-terror bodies, and agencies responsible for the charitable and tax status of NGOs. These bodies can often carry investigations into the activities of NGOs suspected of terror links further than researchers who have access only to open-source information.

Intensified efforts should be made to convince additional countries to follow the precedents set by the European and German Parliaments in preventing terror-affiliated BDS leaders from using taxpayer-funded facilities to spread anti-Israel delegitimization (particularly when the BDS leaders are non-citizens).

In the case of the European Parliament, in September 2017, PFLP terrorist Leila Khaled, who has become very active in promoting and fundraising for BDS, spoke at an event in the Parliament in Brussels. Following protests by Jewish groups and Israel’s Strategic Affairs Minister Gilad Erdan, then-European Parliament President Antonio Tajani wrote to Erdan, stating:

I agree with your point that we should not allow members of groups or entities involved in terrorist acts to speak inside the Parliament. It is in that framework that the issue was raised in the Conference of Presidents and that on 2 October 2017 the Members of the Bureau of the Parliament unanimously endorsed my proposal to systematically deny access to all individuals mentioned in the updated Council Decision [the Decision listing designated terrorist entities], as well as to members of organizations listed there. Consequently, I have reminded the Members of the European Parliament, as well as Parliament’s General Secretariat, that every effort should be made to ensure that no listed persons, or representatives of groups and entities mentioned in the Council Decision, are invited or admitted to Parliament, nor promoted through events or audio-visual means.¹⁶⁰

157 Known also as the Council of National and Islamic Forces in Palestine, or CNIF.

158 <https://bdsmovement.net/call>

159 <https://bdsmovement.net/bnc>

160 Letter on file with author.

It should be noted that despite Tajani's commitment, three terror-linked individuals, Khaled Barakat, Mohammed Khatib, and Charlotte Kates, spoke at an event in the European Parliament in July 2019. Barakat and Khatib are PFLP operatives, as well as being active in BDS, and Kates (who is married to Barakat), heads the PFLP-linked NGO Samidoun. The three spoke at the Parliament on the invitation of MEP Manu Pineda, who previously headed the Spanish BDS organization Unadikum.

Given Tajani's 2017 commitment, every effort should be made to urge the current EU Parliament President, David Sassoli, to honor his predecessor's policy, and deny members of EU-designated terror organizations the opportunity to speak in EU facilities.

As mentioned, the German Bundestag's May 2019 Resolution committed to "not provide rooms or institutions which are under the authority of the parliament administration, to organizations which make anti-Semitic statements or question Israel's right to exist." This follows decisions by several of Germany's largest cities not to allow BDS-promoting groups to use public facilities for their activities.



In June 2019, the German authorities informed Khaled Barakat (who, as noted, spoke at the European Parliament in July 2019), that he was not allowed to participate in political meetings or give speeches in person or over video. Additionally, he was told that his visa would not be renewed. According to reports in pro-BDS outlets, he was given a document by the German police stating that they believed that he might be working for the PFLP and that his political activity could pose a threat to public safety, and endanger peaceful coexistence in Germany.¹⁶¹

BDS National Committee Funding

The issue of funding for Palestinian NGOs involved in the BDS movement has been researched extensively.¹⁶² A significant body of information exists regarding the Western, primarily European, governments, foundations, and individuals who have funded BDS-promoting NGOs. Nevertheless, the funding for the BNC and PACBI is still poorly understood. Both organizations are wholly non-transparent and provide scant information regarding their funding sources.

It appears that a significant provider of resources for the BNC is or was the “Palestinian NGO Network” (PNGO), an NGO which in turn, received funding from Western governments and foundations, particularly through a conduit known as the NGO Development Center (NDC). PNGO serves as a coordinating framework for primarily left-wing, communist and PFLP-affiliated NGOs, and played a central role in facilitating the 2005 BDS Call and the establishment of the BNC in 2008.

In fact, there are indications that the BNC is, from an administrative perspective, essentially a project of the PNGO. The BNC operates or operated out of the PNGO offices, as evidenced by a 2015 advertisement for the job of BNC Media and Communications Officer, which described the place of work as the “Palestinian NGO Network office in Ramallah.”¹⁶³ It appears that in addition to providing the BNC’s infrastructure, PNGO provided the funding for at least some, if not all, of the BNC’s Palestinian employees. Mahmoud Nawajaa, BNC Coordinator, describes his position as “Project Coordinator at PNGO.”¹⁶⁴ Tala Abughoush, the Administrative and Financial Assistant at the BNC, presents herself as “Admin and Finance Operations officer at PNGO.”¹⁶⁵ Ismat Quzmar, who in 2012 served as BNC Coordinator, describes this role on his LinkedIn profile as “Palestinian Non-Governmental Organizations Network PNGO Project Coordinator.”^{166 167}

According to NGO Monitor, PNGO receives funding from the EU, Norway, and the German Society for International Cooperation (GIZ), which carries out projects for the German Ministry for Economic Cooperation and Development (BMZ).¹⁶⁸

Given the May 2019 Resolution by the German Bundestag recognizing the anti-Semitic nature of BDS, which included a call, “not to financially support any organizations, which questions Israel’s right to exist,”

162 Most systematically by NGO Monitor. See NGO Monitor’s extensive database at <https://www.ngo-monitor.org/>

163 See <https://www.jobs.ps/en/jobs/bnc-media-communication-officer-22111>
Likewise, in 2012, Samah Darwish, PNGO Director, told Human Rights Watch that the Israeli Defense Forces had raided the office of the BDS campaign, “whom we’re hosting in our office.” <https://www.hrw.org/news/2012/12/12/israel-stop-raids-west-bank-rights-groups>

164 <https://www.linkedin.com/in/mahmoud-nawajaa-47291484/>

165 <https://www.linkedin.com/in/tala-abughoush-3a5b8569/>

166 <https://www.linkedin.com/in/ismat-quzmar-86640837/>

167 It should be noted that PNGO has also led the campaign among Palestinian NGOs to oppose the inclusion of anti-terrorism clauses in funding agreements from international donors (such as USAID), and called on the international community not to “use aid to undermine legitimate Palestinian resistance.” According to PNGO, “We reject all de-legitimization or criminalization of lawful Palestinian resistance, whether in form of allegations of terrorism, anti-Semitism or otherwise...” See <http://www.pngo.net/pngo-calls-upon-the-international-community-dont-use-aid-to-undermine-legitimate-palestinian-resistance/>

168 According to PNGO’s application for recognition by the UN Conference on Trade and Development’s Trade and Development Board, a document which appears to be no longer publicly available, PNGO’s funders in 2010 included Gobierno Vasco- Boycott National Campaign, Nazuiarteko Elkartasuna-solidaridad International (Spanish Basque Government) (sic), United National Develop Programme (sic), Oxfam Novib, Interchurch Organisation for Development Cooperation, Palestinian Campaign for the Academic & Cultural Boycott of Israel, Institute for International Cooperation of the German Adult Education Association, and NGO Development Center.

and given PNGO's central role in facilitating the BDS movement, which certainly "questions" Israel's right to exist, it would appear that German funding to PNGO is inconsistent with this resolution. All funders of PNGO should be concerned that their funds may be reaching the representatives of terrorist groups.

Another central conduit for Western funding of the BNC and PACBI appears to have been the Ramallah-based NGO Development Center (NDC). The NDC, which works closely with PNGO, has received funds from the EU, France, the World Bank, and UN Women. Additionally, until 2014, NDC served as the administrator of the "Human Rights and Good Governance Secretariat," which pooled funding from the governments of Switzerland, Sweden, Denmark, and the Netherlands.

In March 2013, the NDC published a document entitled "A Strategic Framework to Strengthen the Palestinian NGO Sector."¹⁶⁹ The funding for the creation of the strategic framework came from the French government. In the document's forward, the NDC states that it "would like here to thank the *Agence Francaise De Developement* (AFD) for funding the process of updating and developing this strategic framework as part of their financing of the Fourth Palestinian NGOs Project in partnership with the World Bank." The framework presents a series of "Strategic Objectives," which each include a list of "Programs/Projects/Activities" to achieve them. "Strategic Objective No. 1" in the document is "More effective engagement of NGOs in the process of national liberation and democratization based on an internationally recognized legal framework." The first programs under this strategic objective are:

- BDS Campaign (Boycott, Divestment, Sanctions against Israel).
- Campaign for Academic and Cultural Boycott.

Given that for the NDC, its first Strategic Objective for the NGO sector was to support the BDS campaign, it is highly probable that it served as a conduit to fund the BNC and PACBI, either directly or via the funding which it gave to PNGO and other BDS movement NGOs such as Badil.

As French courts have repeatedly found that anti-Israel boycotts constitute criminally prohibited discrimination, it would appear incongruent that French government funding for the NDC served to promote a strategic framework for advancing the BDS campaign.

There are indications that an additional source of funding for the BNC and PACBI, as well for other BDS-promoting organizations, came from the Palestinian business executives and philanthropists associated with the "Welfare Association" organization, either via the Welfare Association itself or through their individual foundations. Many of these same philanthropists are now both funders and affiliates of Al-Shabaka, the U.S. based "Palestinian Policy Network," which serves as a central hub for strategizing among actors involved in the BDS movement.¹⁷⁰ The role of these executives and philanthropists in funding the BDS movement, both in the PA and the West, requires further study.

It is not just the actual funders of the BNC who are in essence providing funds to the representatives of designated terrorist organizations. Organizations facilitating the transfer of such funds may well be violating terror finance laws and regulations as well. In June 2018, it was revealed that the USCPR was serving as the BNC's fiscal sponsor in the United States.¹⁷¹

In November 2019, a civil lawsuit was filed against the USCPR by Keren Kayemeth Le Israel-Jewish National Fund (KKL-JNF) and several U.S. citizens living in Israel. The suit alleges that the USCPR,¹⁷² in

169 <http://www.ndc.ps/sites/default/files/NGO-Sector-Strategy-English.pdf>

170 These philanthropists and foundations include the A.M. Qattan Foundation (and previously Abdel Mohsin Al-Qattan himself), Zina Jardaneh, who also served as an Executive Committee member of the UK Palestine Solidarity Committee, Nabil Qaddumi, the Hassib J. Sabbagh Foundation, and Mary Nazzal-Batayneh.

171 <https://www.tabletmag.com/scroll/263409/bds-umbrella-group-linked-to-palestinian-terrorist-organizations>

172 Which is known formally as Education for a Just Peace in the Middle East.

serving as the BNC's fiscal sponsor:

Knowingly provides, distributes, and administers financial benefits, money, financial services and provides material support and encouragement to: (a) terrorists who killed, injured and maimed civilians, damaged property or attempted to do so; (b) Foreign Terrorist Organizations in order to facilitate, encourage and provide material support for acts of international terrorism. By these acts, Defendant US CPR aided and abetted said acts of international terrorism, resulting in the destruction of property, as well as causing tremendous emotional and psychological distress.¹⁷³

The US CPR has moved to have the lawsuit dismissed. The evolution and outcome of this case may have far-ranging consequences for the ability of the US CPR and BNC to fundraise and promote BDS, and may shed further light on the role of Hamas and other designated terrorist organizations in the BDS movement. BDS movement leaders are growing increasingly concerned by the implications of the exposure of their terrorist ties. The BNC's Khawaja declared, following the publication of the MSA "Terrorists in Suits" report, that:

The most dangerous thing that is being done against us in politics now, as in Erdan's press conference [i.e., the launch of the Terrorist in Suits report] is when he mentioned us and named at least 24 local and international persons and called us Terrorists in Suits. A good choice of words, but he is describing boycott leaders.¹⁷⁴

The Shift from BNC to PACBI

Given the growing identification of the BNC with terror, it is likely that it will increasingly attempt to use the PACBI label for fund-raising in the West and as the organizational affiliation of its activists. For example, in the Donate section of the BNC website, U.S. donors wishing to make a tax-deductible donation are directed to a form indicating that the donation is for the benefit of "PACBI, on behalf of the BDS movement" (suggesting that the donation is going to a fiscal sponsor of PACBI.) Prominent BDS movement activists, such as Hind Awwad, who in the past identified as representatives of the BNC, now identify primarily as representatives of PACBI.¹⁷⁵

It is, therefore, important to highlight the fact that there is no substantial difference between the BNC and PACBI – they are simply two different names for the same core organization and infrastructure, used alternately to appeal to different target audiences.¹⁷⁶ In fact, while originally maintaining two separate websites, the BNC and PACBI now not only share a website but send out mass emails from the exact same email address ("mails@bdsnationalcommittee.org").

There is a significant possibility that all funders of NGOs connected to the BNC, PACBI, and PNGO may be intentionally or unintentionally in violation of anti-terror financing regulations.

173 <https://hnklaw.com/wp-content/uploads/2019/11/KKL-Complaint.File-Stamped-11-13-19.pdf>

174 <https://www.facebook.com/4IL.org/videos/825596811144253/>

175 Though this may also be connected to the fact that they have now acquired advanced academic degrees.

176 http://jcpa.org/pdf/PACBI_unmasked_web.pdf

Anti-Israel activist from 'Revolutionary Socialist Party' calling for sanctions on Israel. Sydney, Australia.

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Implications for the Counter-BDS Community



In this section, several implications from the preceding analysis for the counter-BDS community are presented.

Shifts in the political division of power and the identity of political leaders will become an increasingly central predictor of the trajectory of BDS in a particular region:

Given the increased centrality of the political and governmental arenas, the fortunes of political forces, shifts in the division of power between political actors, and the proclivities of policy-makers will likely be the greatest factor in determining the direction and levels of activity of BDS in a particular country.

BDS will not determine whether the hard-left faction maintains its influence in the UK Labour Party, the degree of power Podemos will have in the Spanish government, the relative strength of the more moderate and extreme wings of the U.S. Democratic Party, the outcome of the struggle between pragmatists and radicals in the ANC, or the policies and appointments of the EU foreign minister. However, these and similar political power struggles will have a substantial impact on the nature of the BDS challenge.

Dynamic and constantly-evolving political realities mean that the nature of the BDS challenge (and of the campaign to delegitimize Israel more generally) can change rapidly as a result of elections, appointments, or other political shifts. When a favorable political climate for BDS is created, it tends to become increasingly uninhibited and extreme.

The counter-BDS community must ensure that it has the requisite resources, expertise, and relationships to effectively counter anti-Israel initiatives in the political and governmental arenas, particularly on the municipal level. This will require significant investment in enhancing inter-organizational cooperation. In this context, European counter-BDS organizations will likely have much to share with their U.S. counterparts.

Given the growing importance of the political and governmental arenas, the counter-BDS community must develop the requisite capacities, resources, and relationships to act effectively in these arenas. This need is particularly pressing on the municipal level. Identifying BDS initiatives ahead of time, and successfully intervening, will require investment in research capabilities, relationship-building with influential constituencies, specialized legal expertise, and professional communications strategies.

Successfully meeting the challenge of municipal BDS will also require enhanced cooperation and information sharing between counter-BDS actors both within and across countries. This is for two reasons. The first is that counter-arguments, best practices, and precedents from one arena are likely to be informative and helpful in others. Arguments developed in the context of municipal counter-BDS efforts in Northern Ireland or Spain may well be pertinent for countering such efforts in the United States or Chile. In this context, European pro-Israel actors will likely have much to share with their American counterparts.

The second is that given the vast number of potential municipal arenas, counter-BDS actors must be willing to share the information and resources necessary to quickly identify challenges and mount a rapid response. Many different organizations maintain relationships and capacities across a broad range of local arenas, and these must be pooled to meet the challenge. Just as significant resources have been invested in North America to improve inter-organizational coordination in countering academic boycotts, such efforts must be made to counter boycotts in the political sphere as well.

While such efforts to enhance synergies have advanced to a significant degree through frameworks such as the Global Coalition for Israel, past experiences with municipal-level BDS indicate a need for further expanding such cooperation.

In the U.S. context, appropriate attention must be paid not only to the “loud” debates over explicitly anti or pro-BDS congressional legislation, but also to the increasing (and increasingly-sophisticated) political lobbying and advocacy work being carried out by American BDS groups. The most advanced congressional lobbying campaign currently being promoted by American and Palestinian BDS groups is the so-called “No Way to Treat a Child” campaign.

These lobbying campaigns are being led by BDS organizations that, at times, draw less of a public spotlight but are becoming increasingly well-connected on Capitol Hill. The American BDS groups provide Palestinian BDS movement-affiliated NGOs, some of which have ties to terror, with access to congressional policy-makers. Effective action must be taken to counter their advocacy efforts and ensure that policy-makers understand the true nature and goals of these groups.

While continuing to promote legislation aimed at countering BDS, pro-Israel actors should examine the possibilities for leveraging anti-BDS legislation already in force. In addition, they should examine advancing counter-BDS objectives through the exercise of executive powers, particularly in the context of the publication of the UNHRC blacklist.

South Africa stands out as an example of what happens when BDS operates with governmental sanction and in a positive political atmosphere. The latent tendencies of BDS- gross anti-Semitism, support for terror, campaigns of threats and violence- come to the fore.

This reality should be used to highlight the negative consequences of such a situation of governmental or political support emerging in other countries. The rise of Podemos in Spain and Corbyn’s ascent to the leadership of Labour make clear that such a scenario is not an impossibility. Counter-BDS actors standing up to intensified BDS pressure in such arenas should be supported by the wider pro-Israel community.

The counter-BDS community must be prepared for the possibility that the EU arena will heat up again.

The EU, after several years of relative quiet, may again become a central arena for BDS initiatives. If the EU under Borrell adopts an expansive interpretation of the principle of differentiation, the EU may become a catalyst for BDS activity throughout Europe and around the world (even if the differentiation policy itself is not the same as BDS).

The EU arena has in the past been plagued by a lack of coordination and communication among the organizations committed to countering BDS. This must change if the counter-BDS community is to mount an effective response to renewed challenges. Additionally, in this author's experience, the counter-BDS community has, in the past, failed to fully understand and analyze the actors quietly driving de facto BDS activity in the halls of the EU, beyond the more obvious examples such as the ECCP.¹⁷⁷

Therefore, detailed research will be needed to map the actors currently facilitating anti-Israel activity within the various EU institutions, as well as potential avenues and allies for stopping anti-Israel measures and strengthening the EU-Israel relationship.

Fall-out from the UNHRC blacklist

The BDS movement is attempting to use the UNHRC blacklist to promote economic boycotts in a wide variety of arenas. At the same time, it is trying to obscure the fact that the OHCHR actually decided against including many of the BDS movement's primary targets on the list. It is imperative to both support companies included on the list (and make them aware of the negative consequences of giving in to BDS pressure), and to convey that if virulently anti-Israel UN bodies rejected BDS claims regarding target companies, certainly more objective institutions should do so.

The BDS movement and its allies are aiming to have the addition of companies to the blacklist become an annual exercise. It is therefore critical both to expand U.S. legislation prohibiting participation in such boycotts, through executive action if necessary, and to convey to the UN that further work on the blacklist will lead to significant consequences in terms of U.S. funding.

¹⁷⁷ In the past, it was actors such as Charles Shamas and the Mattin Group, working for Aprodev and other frameworks, which, while largely staying out of the spotlight, were particularly influential in driving policies to pressure and sanction Israel. For a description of Shamas' role in advancing differentiation and de facto settlement boycotts, see http://www.europarl.europa.eu/meetdocs/2014_2019/documents/dpal/dv/4d_charlessshamas/4d_charlessshamasen.pdf. For his role with Aprodev, which is closely-linked to the World Council of Churches, see http://www.europarl.europa.eu/meetdocs/2009_2014/documents/wgme/dv/201/201104/20110406_2_cvshamas_en.pdf

Low-hanging fruit and identifying potential targets

The various consequences of the BDS strategy of prioritizing low-hanging fruit can be used to engage and “inoculate” potential BDS targets proactively.

Companies should be made aware of the fact that partially capitulating to, or even attempting to engage with, BDS activists is a recipe for the intensification of the BDS campaign (which will continue even after the company capitulates and BDS victory is declared). On the other hand, refusing to succumb to or engage with BDS will often lead over time to the BDS movement choosing to prioritize other, easier targets.

It is important to expose BDS tactics such as manufacturing victories, and the framing of campaigns in the language of settlement boycotts while advocating in practice steps aimed at undermining Israel’s economic system as a whole. BDS bullying and threats, and indirect tactics such as the promotion of investment screens, should also be exposed.

Yet, even as the counter-BDS community seeks to engage potential BDS targets proactively, it is also important to recognize the BDS movement’s adeptness at identifying “targets of opportunity,” and quickly generating pressure campaigns. It is therefore imperative that the counter-BDS community enhance its ability to identify emerging campaigns in their early stages and respond rapidly.

Exposing BDS anti-Semitism and advancing the IHRA definition in diverse arenas

As anti-Semitism continues to rise from left-wing, right-wing, and radical Islamist sources, it is critical to continue to advance the adoption of the IHRA anti-Semitism definition, which is fast becoming an international consensus. This definition should be adopted not only on the national level, but by municipalities, law enforcement and judicial bodies, universities, student councils, professional associations, religious institutions, and other civil society bodies. The adoption of the definition by over 180 British local councils should serve as a beacon for municipalities in other countries.¹⁷⁸

It is also crucial to invest the resources necessary to systematically expose the anti-Semitic statements and actions which permeate the BDS movement leadership, ideology, and rhetoric. At the same time, it will be very important to continue to emphasize that the fight against this form of anti-Semitism does not impinge on legitimate freedom of expression regarding Israel.

178 See Asher Fredman, “2020: From Oy Vey to Action”, Jerusalem Post, December 22, 2019, for additional examples of the adoption of IHRA by official and civil society bodies. <https://www.jpost.com/Opinion/2020-From-oy-vey-to-action-611746>

Additional steps in light of revelations regarding connections between the BDS movement and designated terrorist organizations

To date, legal and pro-Israel groups have largely focused on conveying information regarding BDS-terror connections to financial bodies. These groups should expand their focus to engaging national and municipal political leaders, law enforcement, intelligence bodies, and tax agencies in examining suspected terror links of BDS movement-affiliated NGOs.

The Israeli government should examine ways to assist pro-Israel NGOs that are being threatened because they have exposed BDS-terror connections.

Intensified efforts should be made to convince additional countries to follow the precedents set by the EU and Germany in preventing terror-affiliated BDS leaders from making use of parliamentary and public facilities. At the very least, all countries should commit to preventing operatives representing terror-affiliated NGOs from promoting BDS using taxpayer-funded facilities, particularly when such operatives are non-citizens. For example, the U.S. Congress and European parliaments should consider preventing non-citizen representatives of PFLP-affiliated NGOs such as Addameer and DCI-P from using parliamentary facilities to carry out their political activities.

In light of the exposure of these terror connections, it is imperative to press all governments, municipalities, EU and UN bodies to cease funding for terror-affiliated NGOs. This has been a central effort of the counter-BDS community for years, and it appears that it is slowly gaining traction, even in areas such as Scandinavia that have long funded BDS-promoting NGOs. Palestinian NGOs, led by BNC-sponsor PNGO, have pushed back aggressively against attempts by the EU to condition its funding on a commitment not to work with terrorist groups. Further coordinated efforts must be made to encourage European citizens to object to the funneling of their tax money to NGOs affiliated with terror.

All those providing or transferring funds to the BNC and PACBI, and their affiliated organizations (such as PNGO), should be made aware that, given the central role of PNIF in the BNC Steering Committee, they may be in violation of anti-terrorist financing regulations.

It is important to highlight, in light of the expected shift of emphasis from BNC to PACBI, that there is no substantial difference between the two. They are simply two different names for the same core organization and infrastructure, used alternately to appeal to different target audiences.

CONCLUSION

The BDS movement today is on the defensive. It faces numerous challenges, including the exposure of its connections to terror and anti-Semitism. The international counter-BDS community, both in Israel and abroad, has improved its coordination and effectiveness over the past decade. The Israeli government's counter-BDS efforts have also contributed significantly to putting the BDS movement on the defensive.

It would be incorrect to claim that the BDS movement's failure to have a greater tangible impact to date is a sign of the inherent lack of threat that it poses. The truth is that the BDS movement had and still has the potential to develop into a greater strategic threat. It is the increasingly effective response on the part of the counter-BDS community which has prevented it from becoming a strategic threat to date.

However, despite the counter-BDS community's successes, it would be a severe mistake to conclude that the BDS challenge has been met, or that resources need no longer be invested in dealing with it. The BDS movement has shown itself to be adept at identifying new opportunities and arenas. To use a boxing metaphor, the BDS movement may be down, but it is certainly not out. By increasingly inserting itself into the political and governmental spheres, it remains capable of a resurgence in the event of the creation of a favorable political climate. In addition, developments in the UN, EU, and ICC arenas could serve as catalysts for renewed BDS activity worldwide.

The BDS movement also continues to work to build alliances (particularly under the banner of intersectionality), with a major thrust being the effort to insert BDS into the checklist of issues that progressives are expected to support. These alliances, if not countered through engagement with the relevant groups, will open up new avenues for the spread of BDS campaigns. The BDS movement is also continuously looking to expand its geographical reach, including in India, eastern Asia, Latin America, and the Arab world.

It is important to note that BDS campaigns tend to grow and have a greater impact following high-intensity military conflicts (such as Operation Protective Edge in July 2014), or even more limited flare-ups such as the wave of lone-wolf terror in 2015-2016, and the intensification of the Gaza border riots in May 2018.

In the event of a multi-front war with the Iranian proxies on Israel's northern and southern borders, or a need for extensive counter-terror operations following a security breakdown in the post-Abbas era, it is likely that BDS campaigns will intensify.

The counter-BDS community must be prepared and equipped to counter the narratives that will undoubtedly be spread by the BDS movement should such a conflict arise. In the past, one reason that the BDS movement and other anti-Israel actors tended to have the upper hand on the communications front was because of their more consistent work at promoting their narratives in the periods between flare-ups (i.e., the communications "battle between the battles"). This enabled them to start from an advantageous position when the battle for public opinion heated up during a conflict. It therefore follows that those aiming to counter such narratives during periods of high-intensity conflict must invest sufficiently in countering delegitimization narratives in an ongoing manner during periods of calm.

The BDS movement has always been as focused on improving the positioning of its ideas within the Overton window of discourse as it has been on actually impacting upon Israel or its economy. While the BDS movement faces immediate challenges, its leaders take a long-term view, including with regards to achieving political power. In the words of BNC Coordinator Nawajaa:

The challenge and the duty of the BDS movement is to build on the shift of the public opinion, relying on the next generation, on those who are now school or university (sic), whom they are part of the demonstration in solidarity with Palestinians, many of them will be the next congress members or the next U.S president.¹⁷⁹

Therefore, as the counter-BDS community continues to invest in responding to BDS initiatives, it must also invest in winning the hearts and minds of the next generation of leaders, and in countering attempts to mainstream BDS movement ideology. Exposing BDS terror links and anti-Semitism is one element of this effort. Authentically engaging major societal groups, developing a compelling positive narrative regarding Israel and Zionism, and inspiring Israel's supporters to action, is another. Done right, the BDS movement can, over the long-term, be successfully contained.

179 Mahmoud Nawajaa, M.A. Thesis, Al-Quds University (2016), p. 96. Nawajaa's thesis, which was clearly not meant for public distribution, provides interesting insight into the formation, structure and internal debates of the BDS movement. These will be the subject of a future study.

About the Author:



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has played a central role in Israel's counter-BDS and public diplomacy efforts over the last decade. He served as Chief of Staff and International Affairs Advisor to Israel's Minister of Strategic Affairs, as Senior Coordinator for International Affairs in the Strategic Affairs Ministry, and in the Strategic Communications Directorate of the Prime Minister's Office. Prior to his roles in government, he served as a researcher at the Jerusalem Center for Public Affairs (JCPA) and NGO Monitor. He holds a B.A. and M.A. from Harvard University in Government and Middle Eastern Studies. Today, he serves as a Fellow at the JCPA and the Kohelet Policy Forum, and as a strategy and communications consultant.



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