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Abstract
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Boycotting Israeli Apartheid: Practical and Ethical Questions

George Bisharat

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Greetings and thanks for coming today. I really appreciate the opportunity to speak to you all about this important topic. What I want to do is start off by explaining what I will do and what I won't do in our coming discussion. Despite the title "Boycotting Israeli Apartheid", my focus really today is going to be on the boycotting part. The discussion of Israel as an apartheid state, or as pursuing apartheid policies vis-à-vis Palestinians under its control, is really a distinct topic and one that is a very important topic and a worthy topic and it deserves a lengthy and full discussion.

But it is somewhat independent of the question of boycotting Israel. They are related in the sense that if you were convinced that Israel is indeed an apartheid state, you would be more inclined to support a boycott of it – just as many of you probably supported the boycott of South Africa. On the other hand, it is not really necessary for you to reach that conclusion in order to support a boycott of Israel. You might very well support a boycott of Israel because of its violations of international law – let's say during the Gaza invasion of 2008–2009. So you don't have to be convinced of the apartheid part of

Demolition of Palestinian homes by Israeli authorities. Photograph by Jennifer Killen, February 2005.

Um al Khair, a village of Bedouin refugees who are not allowed to build homes on their lands because they are in Area C, but Israeli settlers are free to build. Photograph by Jennifer Killen, May 2008.

the argument in order to support the boycott part.

The boycott, especially the academic and cultural aspect of the boycott, has alarmed people to some extent and has incited the most controversy. That's why I'm prioritising the discussion of the boycott over the discussion of apartheid as such. However, I will spend a few minutes right now, up front, laying out some reasons why at least I believe that it's fair to characterise Israel in its treatment of Palestinians as an apartheid system.

You've been exposed to these arguments in some degree, I imagine, in the past. Maybe you've even read my former President Carter's book *Palestine: Peace not Apartheid*. Or you may be aware that Israeli leaders such as Ehud Barak and Ehud Olmert have themselves referred to apartheid in reference to Israel and its treatment of the Palestinians – although their view of it is that it is something that may come in the future but isn't necessarily present now.

A lot of the discussion about this question of the applicability of the apartheid label or not, in my mind goes down a rat hole. It goes into a kind of unproductive comparison between Israel and South Africa and the argument is, on the one hand, that Israel is like South Africa, and of course, on the other hand, the opponents, or the people who feel stung by this criticism say, 'no, Israel is not like South Africa'. My perspective is, Israel and South Africa are both settler colonial societies but they are different variants of settler colonialism. One of them, Israel, aimed at the displacement of an indigenous population. The other one, aimed at the enslavement, that is to say the exploitation of the labour of an indigenous population, and those produce different forms, and different expressions, legal, institutional and the like. To my way of thinking they are in fact different. You know, maybe this reflects my training as a lawyer and my interest in international law, but for me the touchstone is not a particular expression or variant or manifestation of apartheid. I start with the international legal definition of apartheid that comes from the Convention on the Suppression and Punishment of the Crime of Apartheid, and let me just read you that definition briefly. This is not the full definition but it refers to: "Inhuman acts committed for the purpose of establishing and maintaining domination by one

racial group of persons over any other racial group of persons and systematically oppressing them".

South Africa was one example of an apartheid state. I would say that the United States during its period of slavery constituted another form of apartheid. Of course the term hadn't been coined at that time. Nonetheless, I think that this standard would apply and I believe it also applies to Israel's treatment of the Palestinians. In other words, Israel is a third distinct expression, or manifestation of apartheid. It has its own characteristics and it's not identical to the other two, but I believe that the legal standard can be fairly applied. Let me suggest a few reasons why. By no means do I imagine that this is a full exposition and you may have objections and questions and I would be happy to take up some of those during discussion.

But the main points I would make are: first of all, unlike some other people, I believe that when you make an evaluation, when you make a judgement about whether this standard applies to Israel or not, you have to look at the big picture. You can't only look, as for example President Carter did, at the situation in the occupied territories. Likewise, there has been a legal study done by a number of people brought together under the auspices of the Human Resources Council of South Africa. They have produced a legal study which also considers the question of the applicability of the apartheid legal definition and finds that it does in relation to the occupied territories. It doesn't analyse, for example, Israel's treatment of its own Palestinian citizens. And virtually nobody else really encompasses the situation of Palestinian refugees. So, my sense is, or my belief is, you don't look at this in the particulate. You don't look at Israel's policies only in the occupation without also referencing what's going on with respect to citizens of the state who are Palestinian and refugees who are outside the states borders. Why? Quickly, let me tell you what I think on these three categories of Palestinians.

First of all, Palestinian refugees are the 700,000 to 800,000 people who were essentially ethnically cleansed from their homes and homeland primarily in 1948. I use the word 'ethnic cleansing' very deliberately because these people were forced at actual gun point or they fled in fear as a consequence of the deliberate campaign of terror. So they were either

directly forced or fled in fear from their homes because they were Palestinians, Muslims and Christians, and not Jews. And by their predominance in numbers, and even more importantly their predominant ownership of land in Palestine, they constituted obstacles to the establishment of a Jewish state with an overwhelming Jewish majority, which was the goal of the Zionist movement. Expulsion, it seems to me, is the ultimate form of separation and that's what apartheid, the word means literally, separation. So I think the term fits quite appropriately to Israel's treatment of the refugees. Together with their offspring, Palestinian refugees now number some 5.5 million persons.

And of course even had refugees not been forced out in 1948, there is an international legal right that has been recognised for people to return to their homes, no matter if they fled from natural causes, it would be the same. And there is no question that Israel has continually violated that right of return, each and every day from 1948 till the present, while granting rights of immigration and virtually automatic citizenship to Jews based on ethnicity or religion. That same right is denied to those Palestinians who are living in exile…

Let me speak briefly about the situation of the Palestinian citizens of Israel. Today they number somewhere between 1.2 and 1.4 million, depending on whether you count the Palestinian residents of East Jerusalem. Israel counts them in their population census thus the higher figure. The rest of the world does not recognise Israel's annexation of East Jerusalem and therefore doesn't count them, so it's either 1.2 or it's figure of 1.4 or 5 at the upper end. These are Palestinians who escaped exile in 1948; there were about 150,000 to 180,000 of them at the time. Some of them, actually about 25 percent of them, were people who were IDPs or internally displaced persons. That is to say that they had left their homes and villages from places within areas that were controlled by Israeli troops and they never crossed international boundaries. They had not been permitted to return to their homes and villages. Their homes and other properties were confiscated by the Israeli state. There are approximately 30 laws as counted by *Adalah*, which is the Legal Centre for Arab Minority Rights, in Israel that directly discriminate in favour of Jews and therefore against

non-Jews. One of them, I have spoken about without referring to it explicitly, but the Law of Return is the law which grants immigration rights to Jews. Whereas there is no such law that permits the return of Palestinian refugees. This is not to mention policies by the government that politically marginalise and keep subordinate the Palestinian citizens of Israel, and I would be happy to elaborate on that in questions if you like.

Finally, there are the Palestinians who are living under occupation and who have been living under military occupation since 1967, so now almost 43 years and where they have no political rights whatsoever. There has been essentially since 1967 one effective government between the Mediterranean Sea and the Jordan River. The Israeli government, as one Israeli commentator recently put it, has 7 million citizens and 11 million subjects. That is to say there are 4 million Palestinians living in these areas who have no meaningful voice in the political system that essentially controls their lives and they have not had for all of these years. Meanwhile, Jewish settlers of whom there are now 500,000 in the West Bank have full political rights. So they vote in Israeli elections, they run for office. Avigdor Lieberman, the current Foreign Minister of Israel is a resident of an illegal settlement in the West Bank. He is a member of the government however. And then of course there is a whole system of roads and infrastructure that serves the Jewish settlers and is unavailable, cannot be accessed by the Palestinian residents of the occupied territories. Complete segregation of residency, and of course there is the ongoing confiscation and settlement of Palestinian lands.

Just one last gloss on the question of the applicability of the apartheid standard. South African visitors, notable South African visitors like Archbishop Desmond Tutu, John Dugard who is a former Special Rapporteur of the Occupied Territories for the UN, Ronnie Kasrils, former government minster in the South African government – all of these people have visited the region and they have said, speaking of the occupation, that the situation there is far worst than South Africa ever was. It is in their view a more acute form of apartheid than was practiced in South Africa itself.

Let's now shift to the boycott question. I'm going to take it in a couple of parts. I'll talk firstly about the general issues

surrounding the boycott and then I'll focus a little bit more explicitly on the academic and cultural boycott because the question of the academic and cultural boycott is particularly sensitive and evokes special feelings of concern. So I'll treat them somewhat separately.

The idea of boycotting Israel has been around for a long time. There have been sporadic calls. There was, for example, the Arab League boycott of Israel that was sponsored by the Arab countries and was practiced for many years, and has pretty much been abandoned. There have been sporadic calls from within civil society for boycotts of Israel. But I mark the beginning of the modern era of the boycott movement to 2005. In July of that year, 170 Palestinian civil society organisations representing women's groups, human rights organisations, trade unions, professional associations, the whole gamut of Palestinian civil society and everywhere the Palestinians are located in exile, under occupation, from within the borders of Israel itself, issued a call for international solidarity in a program of boycotts, divestments and sanctions or BDS. The occasion was the one year anniversary of the International Court of Justice's (ICJ) decision finding Israel's separation wall illegal and calling for its dismantlement.

That decision had been rendered in July of 2004. A full year had passed and there had been no effective action by anybody, any international organisation, any individual nation-state, or anyone to enforce this important and nearly unanimous decision of the ICJ. So, the Palestinian civil society concluded that if official machinery is not going to take care of the job, the responsibility falls to international civil society and citizens themselves with the Palestinians themselves in the leadership role. Boycott, of course refers to not purchasing Israeli goods or not participating in activities organised by and for Israelis. Divestment means removing investments, taking investments out of businesses, either Israeli businesses themselves or other businesses that do business, that trade with Israel. And then sanctions, refers to official sanctions, actions by states to punish or penalise Israel. The BDS movement is working on these three different fronts and it has achieved significant progress since 2005, and most especially in the last year since the invasion of Gaza in 2008–2009.

Trade unions in the UK, in Canada, in South Africa and elsewhere have begun divestment, either passing resolutions calling for the study of divestments or eventually advocating divestment. Churches have done the same in the United States and elsewhere. A number of academics, including Australian academics, some on this campus, have joined the call for an academic and cultural boycott of Israel. I should say by the way there is the general BDS Movement and then there is a specific organisation called The Palestinian [Campaign for] Academic and Cultural Boycott of Israel or PACBI, that's the acronym. A number of people, as I said, here in Australia, in my country, in Europe and elsewhere have been responding to this call.

Let's talk a little bit about the moral justification, or the moral basis, for this movement. When would you think that a citizen-led boycott is morally justified? Keep in mind this is a non-violent and hallowed tool of activists seeking social change. It was, as you well know, a significant part of the struggle against apartheid in South Africa, a significant part of the struggle for civil rights in the United States domestically, and it has been used elsewhere. So, what sorts of actions do you think would be sufficient to trigger a boycott?

Would expelling the majority population of a country and then denying its return, seizing its property? Would that be sufficient? Israel has done that. Would torturing detainees, some of whom are held administratively, that is to say without trial and on the basis of secret evidence that they've never seen. Would that be sufficient? Israel has done that. How about assassinations of people in territories that Israel itself occupies and controls or in neutral countries, using the passports of a number of its allies? Would that qualify? Israel has done all that. How about demolishing the homes of one group, in order to make space for and enable for colonisation of those spaces by another ethnic group based on ethnic grounds? Would that qualify? Israel has done that. Building a wall on another people's land, confiscating their land to do so, not permitting them to approach anywhere near this land, using this wall to cut communities off from one another so that people can't travel, they can't access their fields, they can't, you know take their mother to a medical appointment without driving three hours to go around the protrusion of the wall into their territory. Would

that qualify? Israel has done that. How about imposing a siege, or blockade, on 1.6 million people for four year, such that the children of that territory begin to show sings of stunting and malnutrition? Would that be sufficient? Israel has done that with respect to the Gaza Strip. How about deliberately attacking civilians and civilian infrastructure with the deliberate aim of imposing disproportionate damage on a civilian population in violation of international humanitarian law? Israel has done that.

The first and most important moral justification for a boycott of Israel therefore is that it has a horrendous human rights record. It doesn't matter whether this is the first or the fiftieth worst record in the world. No nation that has this kind of a human rights record has cause to object if people decide to boycott.

What about the charge that you hear from opponents of the boycott that Israel is singled out and it's not the worst human rights offender in the world and therefore shouldn't be boycotted. I accept at face value the claim that Israel is not the worst human rights offender in the world. I am not really sure who wins that sorry competition. It's not a discussion it seems to me, that's really worth having.

The fact is that there has never been a worst first requirement for a boycott. Had there been, the Pol Pot regime would have been boycotted in the 1970s and 1980s, not South Africa. The simple fact is that a regime like that, or for that matter North Korea today, has no ties to the West where we are and doesn't really give a hoot what we think about it, is essentially therefore impervious to our boycott efforts. Whereas Israel is a country that has a dense web of trade and cultural and academic ties with countries and it cares very much about cultivating its image in international society, civil society. So, therefore, the second justification, it seems to me, is the promise that a boycott of Israel actually could be effective. So if there is downside to the boycott, there is at least something to be gained from it.

It is in fact true that Israel is singled out in a way but not the way its defenders tend to claim. My country, I am sad to say, has exercised its veto powers in the United Nations Security Council 42 times to protect Israel from the consequences of its

violations of international law. That is more than half the vetos that the United States has exercised in the entire history of the United Nations for any purpose. What in fact has happened is that a cocoon of impunity has been created around Israel. My country is not the only one to blame. When Australia voted, as it did this past Monday, to support Israel's application to the Organisation for Economic Cooperation and Development, it essentially said that however much we may be opposed to things that Israel has done, it's not going to change anything, and business will go on as usual.

Contrast this with a few other human rights offenders and aggressors against international law. What happened when Iraq invaded Kuwait in 1990 and they occupied Kuwait illegally? This was a war of aggression, absolutely no question about it. They occupied the country illegally, the United Nations Security Council got together and issued a resolution basically giving Iraq an ultimatum: 'get out or else'. When they didn't respond: 'or else' happened. There was an invasion and they were physically ejected from Kuwait. Maybe 43 years ago the international community should have done the same thing with Israel and we wouldn't be facing the situation today.

Consider Sudan: terrible deeds were done by the government of Sudan, and what happens, the head of state Omar al-Bashir gets indicted by the International Criminal Court. Syria; sanctions by my government. Iran; movement for sanctions in the United Nations. Even the city of Beverly Hills in Los Angeles is getting in on the act and has issued a sanctions resolution against Iran. So, it is not the case, in fact, that other offenders against the international order go unpunished. In fact, Israel is exceptional only in the culture of impunity that surrounds it.

The third reason why a boycott is justified is that official machinery has broken down. It doesn't work as it has worked in other cases. We can talk about the reasons why. The reality is that the United Nations, the International Criminal Court, all of the other options that have been available and they have employed usefully in other circumstances, for whatever reason, don't work here. Therefore, it leaves it up to us, up to citizens. When leaders fail then citizens have to lead. We shouldn't have to do this. We shouldn't be in the position of having to demand

a boycott of Israel. These things should have been done by our political leaders a long time ago. It's because of their failure, because of their dithering, and because of their basic, well it varies I suppose from place to place, I was going to say their cowardice, maybe that not fair to characterise Australian politicians that way, but certainly in my country, cowardice is a problem.

Now, let me now focus a little bit specifically on the academic and cultural boycott. First, I'll speak about the cultural boycott and then about the academic boycott. First of all, Israel has long self-consciously used culture and the arts to promote a positive public image in the world. I don't know if you are aware that the novel *Exodus*, written by Leon Uris and later made into a very popular movie starring Paul Newman, and which had a huge impact on public perceptions of Israel in its early days in the United States and possibly here as well, was commissioned by a Zionist organisation as a propaganda tool basically. And that tradition continues today. There is a very deliberate campaign – they, that is the ones who were doing it, led by the Israel government, call it 're-branding' Israel. One of the leaders of this is the Israeli Consul General in New York City, who apparently has a background in marketing, and brings his expertise to this field. The basic tactic is to promote film festivals and Israeli cultural production as a way of shifting the discussion away from the conflict and all of Israel's violations of international law and to distract everybody by this positive program. It is met on the other side in civil society with organisations that do the same thing. In Silicon Valley there is an organisation called *Israel 21C* – for Century. The sole purpose of this, as opposed to the many other organisations that work on Israel's public image in the United States, this particular one specialises in producing positive news about Israel particularly in the fields of science and technology. A particular aspect of this is focusing on Israel as a leader in green technology. So for example, the electric car magnate or entrepreneur Shai Agassi, has founded a company that is trying to produce electrical cars. It's got an explicitly political program. Among the company's leaders are former IDF generals. Their promotional literature says we're building this electric car because it's good for the earth and because it will ween us from dependence on oil, funds

from which help finance terror. So, it seems to me completely fair, if Israel is deliberately exploiting culture in order to promote a political program, it is completely fair to oppose it on those same grounds and thus to boycott Israeli cultural products.

It's the academic boycott that is most troubling to people and I think it is mostly so because it feels personal. This is not a boycott of cell phones or of some inanimate object, it's a boycott of people. Secondly, it obviously raises concerns about academic freedom. I think that these concerns are justified and important and in fact I share them, to some degree. Let me tell you how I think about it. Obviously I'm sharing this because I think it's the right way to think about it, but you may disagree. My approach to an academic boycott is to employ a negative presumption. That is, if you come to me without further evidence to ask me to support an academic boycott, the first word out of my mouth will be 'no', 'I will not support it'. You have to show me evidence that there is a special need, a special justification, and that the benefits outweigh the costs. There are people who support the academic and cultural boycott by saying "Well look, Israel massively violates the educational rights and rights of academic freedom of Palestinian students and academics alike." It's absolutely true that that is so. I don't actually subscribe to that argument myself. I may be simple minded but I don't believe that two wrongs make a right. There is certainly the hypocrisy of people who only complain about the boycott of Israel but don't seem to have any concern whatsoever for the academic freedom of Palestinians. But beyond that I don't buy into that argument.

It is important to understand that the Palestinian call for an academic boycott distinguishes between individuals and institutions, and calls only for a boycott of Israeli institutions. It does not say that Wollongong University shouldn't invite an Israeli scholar to come speak or to visit for a semester or publish a piece in one of your journals. What it says is that this university and other universities on the outside should not have institutional relationships with Israeli academic institutions. I think that's a fair balance. And let me say that Israel academic institutions, as institutions, are highly complicit in the oppression of the Palestinian people in the occupied territories and elsewhere through their extensive connections with the

Israeli military and arms industry and security elite.

Tel Aviv University (TAU) is built substantially on the lands of the destroyed, the razed Palestinian village of Sheikh Muwanis. The TAU faculty club is in the former village sheikh's home. Hebrew University uses 800 acres that were illegally appropriated from Palestinians after the 1967 war. Bar-Ilan University has helped to found a branch in Ariel, an illegal Israeli settlement in the West Bank.

Let me just quote to you a couple of statements from Tel Aviv University officials about their connections with, and their support of, military research and security research. Tel Aviv University, by the way, is the largest university in Israel. It is, possibly with Haifa University, also regarded as the most left-wing. Here is a statement from TAU Professor Abraham Katzir who works in a program called the Science, Technology and Security Workshop, which is part of an institute at TAU. He says: "Each one of us, is both Israeli citizen and working in these institutes. I am an academic at university and have also done my military service and I was also at the state arms manufacture *Rafael* for some years. All of those things come together. We're all helping one another, something which doesn't happen elsewhere. I've been in the US and Europe and there is a disconnect between the workshops and the army. They hate the army. With us, I think that we succeed by virtue of the fact that we help one another so much."

Tel-Aviv University's President states in their quarterly bulletin: "I myself am impressed by the magnitude of the scientific work being done behind the scenes at TAU that enhances the country's civilian defence capabilities and military edge" and "people are just not aware of how important university research is in general and how much TAU contributes to Israel's security in particular."

There is much more of what he said along these lines and I'd be happy to refer you to some of the studies on connections between Israeli academic institutions and the military. It seems to me here that have exceptional circumstances justifying an academic boycott. I accept that even with the limitation of the boycott to academic institutions as such, there is probably going to be some toll on academic freedom. I believe that the relatively minor toll in relation to the freedom of close to 10

million Palestinians is an acceptable cost to pay. That is why I support a boycott and I now look forward to your comments and questions.

Thank you.

Israel Defence Forces sentry tower. Photograph by Jennifer Killen, May 2005.