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# Peace Studies War – Boycotting Israel for the sake of international law?

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# Peace Studies War – Boycotting Israel for the sake of international law?

## **Abstract**

This article considers the current boycott of Israeli academics by the Sydney Centre for Peace and Conflict Studies (CPACS) - an affiliate of the University of Sydney - arguing that the boycott suppresses academic freedom, does not promote international law or peace, and is fundamentally racist. It was written in answer to an argument in defence of the boycott recently posted on the Australian-government supported website "The Conversation" by CPACS lecturer Paul Duffill (Jan. 15), who argued "the International Court of Justice ruled in July 2004 that Israel is occupying Palestinian territory in violation of international law", and therefore "a peace centre can hardly be expected to be 'neutral' or disinterested."

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This article considers the current boycott of Israeli academics by the Sydney Centre for Peace and Conflict Studies (CPACS) - an affiliate of the University of Sydney - arguing that the boycott suppresses academic freedom, does not promote international law or peace, and is fundamentally racist. It was written in answer to an argument in defence of the boycott recently posted on the Australian-government supported website "The Conversation" by CPACS lecturer Paul Duffill (Jan. 15), who argued "the International Court of Justice ruled in July 2004 that Israel is occupying Palestinian territory in violation of international law", and therefore "a peace centre can hardly be expected to be 'neutral' or disinterested."

### **Boycotting academic freedom**

What is an academic and cultural boycott of Israel intended to achieve? The purported reason for launching a universal boycott of Israeli academics is their country's alleged breaches of international law. Supposedly, the smarting academics will help turn around Israeli policy. In Australia, academics have minimal influence on foreign policy, and even so less in Israel where genuine national security concerns predominate. Of course, those Israeli academics who are smarting will tend to do the opposite, to fight back like the rest of us when pushed against the wall. The academic boycott will never be effective in its supposed objective of changing Israeli policies.

Nevertheless, supporters of the boycott might assert that it has value in Australia. That could be because the boycott raises awareness of the targeted Israeli behaviour, which might percolate through to Australian foreign policy makers. So, if a secondary objective is to generate Australian antagonism to Israeli actions, a boycott targeting Israeli academics is really about using a local academic vehicle to influence Australian foreign policy. There is no evidence that this is effective either.

In fact, the boycott simply vilifies its target and demonstrates the boycotters' claim of a moral high ground. On its own avowal, CPACS has picked a side in the dispute (Duffill says that the CPACS "can hardly be expected to be neutral") and its members are active in Palestine solidarity campaigns. The point is that in this morally complex conflict, the Sydney CPACS has entered into the dispute as an actor and seeks to pursue one party's interests.

CPACS position that the entire University should officially take the side of the boycotters and insist that it be adhered to by academics working there is intellectual totalitarianism reminiscent of Stalin's 1937 purges within the Soviet Communist Party. This is not the normal practice among respectable universities, which resist political pressure to adopt partisan policies or repress academic research. Choosing sides between competing nationalities, religions and races politicises a campus, alienates members of faculty staff and is toxic to faculty collegiality. Jews would be alienated, but not only them.

Let's put this in comparative perspective: Should the University of Sydney cease all collaborative research with Indonesia until the Papuan self-determination movement is satisfied? What about publishing boycott manifestos on the democratic deficits in China, Fiji, Malaysia and Singapore? Should the University state its official position and take action on an Australian aboriginal treaty? If not, should other Australian universities break off all contact with the University of Sydney or shun its academics who do not individually endorse an official pro-treaty statement? Should academic opponents of an official Australian treaty be penalised?

Duffill suggests that the academic boycott does not affect individual academics and that the Palestine Academic and Cultural Boycott of Israel guidelines are clear on this. To the contrary, the PACBI guidelines do not meaningfully distinguish between Israeli academics and representatives of their institutions. For example, a brilliant Australian-Israeli bio-mathematics colleague was told by a science journal that it could not publish him because of his Tel Aviv University address.

Academics are members of the social sector who typically tend to be public intellectuals and advocate for individual freedoms, liberal values and social justice. Professor Dan Avnon of the Hebrew University, who was not allowed by the Sydney CPACS to spend part of his sabbatical there, had sought to undertake individual academic work in Arab-Jewish peace studies. The irony is that those being boycotted are typically people like him who reach out for peaceful dialogue.

The suppression of peaceful engagement with Israeli academics makes sense only because the objective of the boycott has nothing to do with peace. Rather, the long-term objective of the academic and cultural boycott is to marshal Australian hearts and minds in support of Palestinian and against Jewish self-determination goals. Unfortunately, this approach entails denial of a Jewish state and supercession of Israel - a zero-sum game in which the Sydney CPACS has chosen a side.

### **International law as the handmaiden of diplomacy**

Alleging that a boycott of Israeli academics is warranted because their country has breached some international laws raises the question of whether those laws have been breached. But, first, let's take a step back and critically consider the real authority of the relevant international law.

I argue that international law is primarily an instrument of diplomacy and the UN legal system cannot be relied on to impose external solutions for intractable political problems that are fair, acceptable to the parties or sustainable.

The role of international law in international relations is a topic of controversy. Among the many views of international law are those that consider it to articulate universally true human values, those that consider it to be a part of diplomacy, that consider it an independent structure in the international order, or that consider international law as too weak to be a formal legal system at all.

In an international system of equal sovereign states, matters of coordination and cooperation are decided by agreement. While that may be relatively straightforward at the bilateral level, at multilateral levels, consensus is often fractured and formulated painstakingly through multi-year conferences. There will be winners and losers in such negotiations and not all states' interests will be addressed fairly.

Yet beyond these contractual undertakings, universal meta-rules are said to have evolved that apply above all agreements. These comprise mostly the law of treaties, such as the overarching principle that agreements made should be honoured. There are also over-riding norms outside of the law of treaties that all can agree on as applicable in all circumstances - but these are only a few defined prohibitions on humanitarian crimes. Non-consensual international law does not provide much independent legal substance in international relations.

Law enforcement powers exercised by police forces, courts of law and penal authorities that you find in a national legal system are essentially absent in international law. The lack of authority to enforce agreements and decisions in international law means that, from a positivist perspective, international law does not comprise a formal legal system. The international legal system does not even have a clear separation of governmental powers and relationships between the United Nations legislature, executive and judiciary are not subject to mutual supervision under the rule of law. For example, the International Court of Justice (ICJ) does not review the legality of the actions of UN political organs.

Let us then put the ICJ, the highest UN authority on international law, into perspective. The Court's work is a mix of technical and political functions. At the technical end of the spectrum, judges apply legal expertise to objective questions. Yet, faced with geo-politically sensitive decisions, they apply political pragmatism. Judges are appointed on a regionally representative basis and, where their country's national interests are involved, they decide accordingly. A country that does not have its own judge on the bench in a matter to which it is party can appoint one ad hoc. Appointees must not only have credible legal expertise but be reliable handlers of national political imperatives in the international context. This judicial process is far more politicised than those in legal systems practising a separation of powers and stricter rule of law. In geo-political cases, the Court functions virtually as a UN executive agency. Perhaps that is why the vast majority of individual UN members have never fully signed on to accept the Court's jurisdiction.

In sum, it is naïve to regard international law as a monolithic legal structure or to place faith in its mythical moral authority. The notion that international law is principally the handmaiden of diplomacy seems more sensible and persuasive. Getting back to the charges of Israeli illegality, there are many infringements of international law alleged to be committed. A

principal legal authority deciding on the illegality of Israeli actions under international law is the "2004 ICJ Advisory Opinion on the Legal Consequences of the Israeli Separation Barrier."

However, this ICJ advisory decision raised more legal controversy than any it had delivered before. In open societies, court decisions are usually publicly critiqued for their reasoning and outcomes. Most developed countries had made formal submissions that the Court lacked jurisdiction. Israel and most developed countries declined to participate in this judicial lynching process. However, the Court did not require evidence or argument from the Israeli perspective anyway as the preamble to the UN General Assembly resolution referring the issue to the ICJ made it amply clear that the ICJ was to rule that Israel's West Bank barrier was illegal.

The ICJ proceeded to deliver a final judgement of sweeping generalisations and its legal reasoning was largely not given. For example, the ICJ asserted that there is no right of self-defence against non-state actors, such as Palestinian bombers, and self-defence is a right that arises only against an enemy belligerent state.

Inconsistent with that, the ICJ also considered that Israel was engaged under the laws of international armed conflict in the occupation of another state, but did not explain when that other state came to be occupied or how these two contrary positions could be reconciled. Dissenting opinions from some judges of developed countries expressed misgivings as to the majority's reasoning.

Of course, if countries like Spain, Turkey or China who are bolstered by blocs of friendly states were embroiled in self-determination disputes - be they Basque, Kurdish or Tibetan - their geo-political relationships would prevent them from being assailed in a lawfare attack. Israel's political isolation means that it has little influence in the formulation of international legal agreements.

There is only one small Jewish state and it is boycotted by the 57 Muslim majority countries and treated with suspicion by many Catholic and other developing ones, meaning most UN members. For example, when states representing a quarter of the world's population within the Organisation of Islamic Cooperation, demanded as a condition for approving the International Criminal Court that it include a new international crime designed specifically to prosecute Israelis for settling beyond the 1949 armistice lines, the new crime was adopted. In the formulation of judicial decisions, Israeli judges cannot even represent their region on UN judicial benches because the Jewish state has always been boycotted within its Asian regional grouping at the UN.

Ultimately, the alleged Israeli breaches of international law must be regarded in light of political strategies practised in the UN legal system. International law is a tool used there to further a national political purpose. It shapes rhetoric and provides material for argument to pursue national interests and those who can shape it to their interests will use it more, i.e. those who can control committee votes and judicial benches.

However, for the same reasons, international lawyers cannot be relied on to impose fair solutions for other peoples' intractable political problems. Nor can they implement them. The final truth is that disputing parties need a resolution that adequately serves the essential interests of both -as even the ICJ recognised in principle when it called in its judgement for "efforts to be encouraged with a view to achieving as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours." The process for achieving this is the way of good faith negotiations and goodwill to implement outcomes - not discriminatory boycotts.

### **Anti-Zionism and Antisemitism**

Anti-Zionism and antisemitism are separate and each multifaceted but they share much in common, overlap and are in a relationship. As in a marriage, they often speak for each other. This is demonstrated statistically and by examination of their respective beliefs and principles as stated by Jews and by anti-Zionists.

Zionism means support for a Jewish homeland in the land of Israel. Zionism and Israel are interchangeable: Zionism is the aspiration and Israel is its realisation.

Everyone knows that at least two peoples claim this land. This stimulates among Zionists a range of opinions on how best to make peace, settle borders, and promote Palestinian rights. Criticism of Israeli approaches to these problems is not anti-Zionism. To the contrary, free and vigorous criticism of governmental policy is the bulwark of democratic freedom.

A step further is condemnation of Israel and Zionism altogether as illegitimate, fraudulent or criminal. Is that antisemitic?

A brief comparison is illuminating: In 1975, the ICJ handed down a decision on the Western Sahara region, where the local Sahrawi people assert their right to self-determination and claim sovereignty as the Sahrawi Arab Democratic Republic. Morocco also claims sovereignty but the ICJ decided that Morocco's claim lacks validity. Currently, Morocco still occupies

80% of the disputed region, where it is engaged in sporadic military conflict with the Sahrawi people's Polisario Front, and a range of peace-seeking UN Security Council decisions have been adopted. Yet there has never been a call for a universal academic boycott of Morocco in the 38 years since the ICJ decision. Indeed, the Sydney CPACS proudly hosted a seminar in March 2012, where the Moroccan Ambassador to Australia spoke about the struggling peace negotiations.

Why then is there such a striking one-sided preponderance of Sydney CPACS events concerning support for Palestine? Why is there so little interest in Australian academe for the Sahrawi case as compared to the dispute over Israel-Palestine? The essential answer is that in the Western Sahara there are no Jews asserting their right to self-determination in the domain of Islam or the Christian Holy Land.

Anti-Zionism is often an expression of antisemitism. First, statistically, most Jews are Zionists. Polls indicate in excess of 80% of diaspora Jews are supportive of Israel as the Jewish homeland. Half the world's 13 million Jews live in Israel. Although many non-Jews are also Zionists, it is the Jews who overwhelmingly identify themselves as a distinctive ethnic, cultural and religious group bonded with the Jewish homeland. Jews as a group are the principal targets in anti-Zionism.

Second, many anti-Zionists are, in fact, also antisemites in their own words. It is still unacceptable social conduct for pro-Palestine advocates in Australia, North America and Europe to articulate Jew hatred publicly. However, it is increasingly common in the online environment of groups such as Australian Friends of Palestine. In Muslim populations, rabid antisemitism is normal. Egypt's President Morsi's statements that "We must never forget, brothers, to nurse our children and our grandchildren on hatred for them: for Zionists, for Jews", and that Zionists are "warmongers, the descendants of apes and pigs", are unmistakable.

Third, moving on to an examination of beliefs and principles, is the human rights notion of self-determination. The right to self-determination is held by Jews today as much as by any other people. The Jews' ties with the land of Israel have proved longer enduring and more resilient than any other people. The land was only ever independently ruled by its local population as a Jewish state, both in ancient and modern times. To deny them this legal right on principle is racial discrimination.

A fourth proof of antisemitism is evident in the singling out of the Jewish state. No other countries struggling through complex regional political tension and conflict are so delegitimised and vilified. There is no popular public campaign of similar scale, intensity and vindictiveness against any people in the Middle East, Africa or Asia. Only the Jewish state is regarded as ominously powerful, mysteriously poised at the centre of world fate.

At this point, it is necessary to address arguments by anti-Zionists to counter accusations of antisemitism. Two rationales given by anti-Zionists for denying the Jews self-determination are pragmatic and religious. The pragmatic reason is that an Arab population lives in their homeland and there is too much friction with Arab residents and neighbours. This humanist anti-Zionism blithely disregards the fact that the state of Israel exists, is successful and has a Jewish population of nearly 7 million. Nor is it otherwise applied to any other established country experiencing internal strife, such as Rwanda, Lebanon, Congo, etc. On the other hand, there are religious beliefs that simply deny Jews a secular legal right to self-determination in the Holy Land altogether, as held by most Muslims, many Christians and a few Jews. Whatever the religion and its reasons for discrimination against self-determination for the Jewish people, it remains a form of discrimination.

Finally, a favourite defence against accusations of antisemitism is that some Jews also are anti-Zionist. This is true but it is not a counter-argument. The argument that the existence of Jewish anti-Zionists proves anti-Zionism is not antisemitic, is premised on the fallacy that no Jew can be antisemitic.

A better understanding is revealed by the joke that when two Jews have a discussion there are always at least three competing opinions.

Looked at another way, the fact that Kim Philby (the famous Soviet spy) was an Englishman did not justify Soviet communism. Nor did the fact that kapos (barrack officers in European death camps who collaborated with the guards) were often Jews justify Nazism.

While Arab governments are in for the long game, determined that the Jewish state will not last, and therefore are teaching contempt for Jews and hatred of Israel in their school curricula, Prof. Dan Avnon from Tel Aviv University researches and develops Arab-Jewish peace education programs. His boycott by the Sydney CPACS is more evidence that the CPACS is a partisan in the conflict, adding fuel to fires of racial hatred. The notion that boycotting Australian-Israeli academic links is justified by alleged Israeli breaches of international law simplistically misunderstands the world: the role of academia, the United Nations process, and the Middle East. CPACS advocacy for the University of Sydney to engage in an academic and cultural boycott of Israel threatens Australian academic freedom and the University of Sydney's reputation.

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