

# *Civil Society: Upholding Rights, Promoting Accountability\**

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## **Introduction**

The great Brazilian educator, Paulo Freire, once said [1]:

“One of the gravest obstacles to the achievement of liberation is that oppressive reality absorbs those within it and thereby acts to submerge human beings’ consciousness. Functionally, oppression is domesticating. To no longer be prey to its force, one must emerge from it and turn upon it. This can be done only by means of the praxis: reflection and action upon the world in order to transform it.”

In this presentation I shall examine how Palestinian civil society’s reflection on the roots of Palestinian oppression and its concerted action to end this oppression have created a fertile atmosphere for effective and sustainable international solidarity that promises to transform our little world and, perhaps, the world at large, as a result.

We are here today commemorating the fifth anniversary of the International Court of Justice’s decision against Israel’s colonial Wall. It is also the fourth anniversary of what some analysts have termed one of the most significant Palestinian political documents in decades, a call that announced the most consequential response by Palestinian civil society to the historic ruling at the Hague. On 9 July 2005, a year after the ICJ Advisory Opinion and the intransigent and dismissive Israeli reaction to it and decades after the utter failure of world powers to hold Israel accountable to international law, Palestinian civil society issued its call for Boycott, Divestment and Sanctions, or BDS, against Israel until it fully complies with its obligations under international law and respects Palestinian rights, paramount among which is the right to self determination.

As Israel shifts steadily to the fanatic, racist right, as the latest parliamentary election results have shown, Palestinians under its control are increasingly being brutalized by its escalating colonial and apartheid policies, designed to push them out of their homeland to make a self-fulfilling prophecy out of the old Zionist canard of "a land without a people." Of all the manifestations of this monumental injustice, Gaza today stands out as *the* test of our common humanity and our indispensable morality.

Israel's inhumane and criminal siege of Gaza had already played a significant role in educating international civil society about Israel's violations of international law. Warning of the devastating impact of that siege, Karen Abu Zayd, the Commissioner-General of UNRWA, stated [2]:

"Gaza is on the threshold of becoming the first territory to be intentionally reduced to a state of abject destitution with the knowledge, acquiescence and — some would say — encouragement of the international community. ... Humanitarian work is profoundly undermined in a context where there is implicit or active complicity in creating conditions of mass suffering."

It is this aspect of the siege, the processes leading not just to "mass suffering" but also to the slow death of the most vulnerable sectors of the population people and to inhibiting the development of a generation of Palestinian children, which prompted UN Special Rapporteur Richard Falk's exceptionally courageous and accurate description of it as a "prelude to genocide." [3] A high-ranking Arab League-sponsored investigative legal team has recently affirmed that "Israel's actions met the requirements for the *actus reus* of the crime of genocide contained in the Genocide Convention, in that the IDF was responsible for killing, exterminating and causing serious bodily harm to members of a group - the Palestinians of Gaza." [4]

By contributing to Israel's blockade of Gaza and its illegal war of aggression against 1.5 million Palestinians in it, the EU and other Western states have reached a qualitatively different stage of complicity. [5] While they've been accused before, most notably by Harvard expert Sara Roy [6], of collusion in a deliberate Israeli policy of "de-development," in the Gaza era they've become, more blatantly than ever, full partners in the US-Israeli policy of undermining the rule of law and espousing in its stead the law of the jungle, thereby promoting the Bush-Bin Laden self-fulfilling prophecy of a dichotomous world divided surgically into good and evil, with each side regarding the other as evil.

Despite the Israeli war's abundantly clear illegality and immorality, the massively disproportionate loss of human life, and the overwhelming destruction of private and public property, Western leaders, including those here in the Hague, were quick to issue statements either offering outright support for it or expressing concern about the loss of life and suffering on "both sides," blaming the Palestinian resistance for provoking the atrocities. Either way, they absolved Israel of any responsibility under the pretext of its "right to defend itself," an assertion that was flatly rejected by leading international jurists and human rights organizations [7], who accused Israel of committing war crimes and even crimes against humanity.

Gaza aside, Palestinian civil society and a growing number of influential human rights advocates recognize that Israel's regime over the indigenous people of Palestine constitutes occupation, colonization and apartheid. Specifically, Israel's decades-old oppression takes three basic forms which were at the core of the Palestinian BDS Call [8]:

- (1) The prolonged occupation and colonization of Gaza and the West Bank, including east Jerusalem, and other Arab territories;
- (2) The legalized and institutionalized *system* of racial discrimination against Palestinian citizens of Israel; and
- (3) The persistent denial of the UN-sanctioned rights of the Palestinian refugees, paramount among which is their right to reparations and to return to their homes of origin, in accordance with UNGA Res. 194.

Ending these three forms of oppression is the minimal requirement to achieve a just peace in our region, especially since attaining the implied rights is the most fundamental embodiment of the exercise of the Palestinian right to self determination.

The most important of all three injustices is without doubt the third -- Israel's denial of the right of the Palestinian refugees to return. The core of the question of Palestine has always been the plight of the refugees who were ethnically cleansed – by Zionist militias and gangs and, later, by the state of Israel – during the Nakba and ever since. The fact that refugees form a majority of the Palestinian people coupled with their 61-year old suffering in exile make the recognition of their basic rights, including their right to reparations and to return to their homes of origin, *the litmus test of morality* for anyone suggesting a just and enduring solution to the Palestinian-Israeli colonial conflict. Moral and legal rights aside, the denial of Palestinian refugee rights guarantees the perpetuation of conflict. [9]

Israel's repressive and racist policies in the 1967-occupied Palestinian territory have been recognized as constituting apartheid by a host of opinion leaders such as Archbishop Desmond Tutu, former US president, Jimmy Carter, and former UN Special Rapporteur for human rights, Prof. John Dugard, among others. A recently published South African academic study has also confirmed that [10]. Even former Israeli Attorney General, Michael Ben-Yair, wrote in a 2002 article in Haaretz describing Israel's regime in the OPT, "We enthusiastically chose to become a colonial society, ignoring international treaties, expropriating lands, transferring settlers from Israel to the occupied territories, engaging in theft and finding justification for all these activities. ... In effect, we established an apartheid regime in the occupied territories...." [11]

Unbound by diplomatic considerations and political restrictions, Palestinian research into the matter goes further than that, breaking new ground in understanding Israel's regime over the entire people of Palestine. An in-depth strategic position paper published by the

Palestinian BDS National Committee [12] states that Israel's origins, laws and policies against the Palestinian people, *including the Palestinian citizens of Israel*, fit to a large extent the definition of apartheid in the UN Convention on the Suppression and Punishment of the Crime of Apartheid of 1976. [13] The conceptual origins of Israel's unique form of apartheid are found in Zionism, a racist European ideology that was adopted by the dominant stream of the Zionist movement (World Zionist Organization, Jewish Agency, Jewish National Fund, among others) in order to justify and recruit political support for its colonial project of establishing an exclusive Jewish state in historic Palestine. Political Zionists dismissed the indigenous population of Palestine as non-existent in the famous Zionist slogan of "a land without a people;" making this a self-fulfilling prophecy, Zionist forces forcibly displaced 750,000 - 900,000 Palestinians from their homeland and destroyed hundreds of the depopulated Palestinian villages in an operation termed "cleaning the landscape" that lasted until 1960. [14]

Israel's regime over the Palestinian people amounts to apartheid precisely because it displays many of the main features of the crime as defined by international law:

1. Racial discrimination against the indigenous Palestinian people who became citizens of the State of Israel was formalized and institutionalized through the creation by law of a "Jewish nationality", which is distinct from Israeli citizenship. No "Israeli" nationality exists in Israel, and the Supreme Court has persistently refused to recognize one as it would end the system of Jewish supremacy in Israel. The 1950 Law of Return entitles all Jews -- and only Jews -- to the rights of nationals, namely the right to enter "Eretz Yisrael" (Israel and the OPT) and immediately enjoy full legal and political rights. "Jewish nationality" under the Law of Return is extraterritorial in contravention of international public law norms pertaining to nationality. It includes Jewish citizens of other countries, irrespective of whether they wish to be part of the collective of "Jewish nationals," and excludes "non-Jews" (i.e., Palestinians) from nationality rights in Israel.
2. The 1952 Citizenship Law [15] has created a discriminatory two-tier legal system whereby Jews hold nationality and citizenship, while the remaining indigenous Palestinian citizens hold only citizenship. [16] Under Israeli law the status of Jewish nationality is accompanied with first-class rights and benefits which are not granted to Palestinian citizens.
3. The Israeli Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, for the exclusive benefit of Jews. In 1998, the Committee on Economic, Social and Cultural Rights, CESCR, expressed [17] grave concern about this law and stated that large-scale and systematic confiscation of Palestinian land and property by

the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination, because these agencies by definition would deny the use of these properties to non-Jewish citizens of the State.

4. Return of Palestinian refugees and Internally-Displaced Persons (IDPs), as required by international law, has been prevented by means of force and legislation on racist grounds. Simply because they are not Jews, Palestinian refugees were excluded from entitlement to citizenship in the State of Israel under the 1952 Citizenship Law. They were "denationalized" and turned into stateless refugees in violation of the law of state succession. Their land and other property were confiscated by the State.

For decades, racial discrimination against Palestinian citizens of Israel in every vital aspect of life has been the norm. From land ownership to education to health to jobs to housing, the indigenous Palestinians have been denied equality by the State's laws and policies. For instance, they are not allowed, to buy or rent land in about 93% of the state lands of Israel. [18] To this date, polls consistently show overwhelming majorities of Israeli Jews standing in opposition to full equality with the indigenous Palestinians in the state. [19] So the fact those Palestinians can vote, unlike their black African counterpart under South African apartheid, becomes almost a formality, a tokenism of sorts, clearly designed to project a deceptive image of democracy and fend off well-justified accusations of apartheid. [20]

### **European Official Complicity in Human Rights Violations and Undermining of International Law**

Despite the above, awash with understandable guilt over the Holocaust, unable or unwilling to recognize the fundamental difference between opposition to Israel's violations of international law and discrimination against Jews -- as Dutch Holocaust survivor, Hajo Meyer, argues -- and subscribing to the general European trend of bribing the Palestinians to accept paying in their land and rights the price of a European genocide against Jews which Palestinian Arabs had no role in perpetrating, the Western establishment failed to adopt any policy instrument intended to hold Israel accountable or to pressure Israel in any meaningful way to actually end its human rights abuses and implement the relevant precepts of international law.

At the very least, after the ICJ ruling and the pursuing resolution by the UNGA, the European political establishment could have used its immense economic clout to compel Israel to dismantle its illegal Wall; refrain from the systematic destruction of the infrastructure of a future Palestinian state, mostly paid for by European tax payers; end the policy of extra-judicial executions, home demolitions, administrative detention, torture of political prisoners and detainees, and uprooting hundreds of thousands of trees, most of them olive trees; and,

most crucially, stop its policy of collective punishment and siege, enforced through hundreds of humiliating roadblocks and checkpoints that deny the right to education, health care, access to fields and workplaces, and otherwise infringe upon freedom of movement.

On the contrary, the EU has for decades adopted a “constructive engagement” approach with Israel, hoping it would allow it to influence Israeli policies towards attaining some respect for Palestinian rights. After many years of a particularly ill-conceived EU-Israel Association Agreement, the EU has in reality failed to wrest any real concessions from Israel and has ended up bankrolling and diplomatically covering up Israel’s criminal behavior in the OPT. In a nutshell, Europe, like the US, has treated Israel as above the law of nations, an exception that should not be held accountable to international law. This, by definition, constitutes complicity in Israel’s policies, leading many analysts to view Europe’s role as profoundly flawed, both morally and legally.

Morality and legality aside, at a pragmatic level European policy on the question of Palestine does not bode well, not just for Palestinians and Arabs, but also for the future of Europe and its peoples, as well as for the prospects of peaceful coexistence for Israeli Jews in a predominantly Arab region, after justice has prevailed. Without addressing human rights, particularly the basic rights of the indigenous people of Palestine, whose cause lies at the very heart of the entrenched feeling of injustice among Arabs, Muslims and, as John Dugard argues, many other peoples in the global South, there is no hope, in the long run, of truly bridging the Mediterranean and fostering a region of prosperity, stability, freedom and universal respect for international law and human rights. Europe stands to lose its vast strategic interests in the region as a direct result of its inability to uphold the rule of law and its double standard in selectively advocating human rights.

### **Policy Recommendations:**

Given the above, the most morally and politically sound policy that the international civil society can pursue to contribute to upholding the primacy of international law and universal human rights in the Middle East is through adopting a morally consistent and operative position that endorses meaningful BDS initiatives against Israel, similar to those applied to apartheid South African after the utter failure of the immoral and misguided policy of “constructive engagement.” The president of the UN General Assembly, Father Miguel D’Escoto Brockman, has recently appealed to the world to do exactly that. [21]

While moral consistency and commitment to universal human rights are the overriding principles of the global BDS movement, operationally, BDS is based on three basic principles: context sensitivity, graduality, and sustainability. Accordingly, we believe that conscientious academics, intellectuals, human rights activists and civil society organizations in any given

country know best how to apply BDS most effectively in their particular circumstances and political reality. Still, I was asked to give some policy and programmatic recommendations in this forum, so allow me to suggest the following:

1. Promoting a general boycott of all Israeli services and products, until Israel fully complies with its obligations under international law. Some European and North American groups have opted for a boycott of products of Israeli settler colonies only. If taken as a first, more convenient tactical step, this would still heed the Palestinian BDS Call. But if the logic behind this selective boycott opposes a general boycott on principle, it conflicts with the BDS Call and raises serious questions about moral and legal consistency [22]. In this context, it is the duty of all Dutch and other civil society groups working for a just peace in Palestine to support the PEACE campaign [23] promoting a boycott of settlement products in the Netherlands against legal and political attacks by Israel lobby groups. Israel is indeed mislabeling products of its colonies and thus violating its trade agreements with the EU. This must be used to stop the flow of those illegal products to European markets.
2. Promoting a boycott of all Israeli academic, cultural and tourist institutions that are complicit in maintaining the Israeli occupation and apartheid regime. This demands raising awareness among academics, artists and cultural workers about the role those institutions have played in perpetuating injustice and colonial oppression [24]. Violations of the Palestinian boycott criteria should be denounced in the same language used in the past against those who failed to respect the anti-apartheid boycott against South Africa. Heeding the boycott is the minimum that any conscientious academic or artist is expected to do in the face of Israel's persistent and intensifying oppression;
3. Promoting ethical investment by trade unions, faith-based organizations, local councils and national pension funds, by divesting from Israel bonds and from all companies, banks and other financial institutions that profit from or are otherwise complicit in Israel's occupation, denial of Palestinian refugee rights or system of racial discrimination against the indigenous Palestinian citizens of Israel;
4. Promoting ethical corporate responsibility leading to divestment from, and a boycott of products of companies -- whether Israeli, Dutch or international -- that are implicated in violations of international law and human rights, such as Veolia, Alstom, Eden Springs, Agrexco, Ahava, Lev Leviev Diamonds, Motorola, Caterpillar, among others;

5. Applying public pressure to ostracize the Jewish National Fund, JNF, and to deny it its current legal status in most western countries as a tax exempt, "charitable" organization;
6. Pressuring local councils and regional governments to strictly apply European law which urges the preclusion from public contracts of companies involved in "grave misconduct" at the human rights or labor rights levels. Veolia's recent gigantic losses in Stockholm, West Midlands, Bordeaux, Tehran and Melbourne should inspire us all in this respect. When there is a right and a will, there certainly is a way;
7. Applying effective pressure on public officials and political parties to heed Amnesty International's call for an immediate arms embargo on all parties of the Middle East "conflict." Regardless of the valid criticism against Amnesty's morally and legally untenable equation between the occupying power with the people under occupation and their resistance movement, this call still includes a ban on arms trade with Israel and on shipping arms to Israel through Dutch or European ports and airspace. Such a ban should ensure third-party/end-user conformity to international law and human rights principles, as well;
8. Calling for an immediate suspension of the EU-Israel Association Agreement [25] due to Israel's grave, persistent, and well documented violation of its articles (2) and (83), as supported by many leading voices in the EU Parliament as well as civil society organizations in France, Britain, Spain, Italy, the Netherlands and Belgium, among others;
9. Holding Israel accountable for compensating in full the Palestinian people and the donor countries, as the case may be, for all the illegal, wanton destruction it brought upon Palestinian society, economy, as well as private and public property in the recent war of aggression on Gaza as well as during the siege and past invasions and military offensives;
10. Supporting the work of the UN Human Rights Council and human rights organizations in investigating allegations of Israeli war crimes and other grave violations of international law and outlining clear, effective follow up measures to be taken if guilt is established.

## BDS Achievements

But can it work? A quick tally of some of the BDS campaign's latest achievements cannot but confirm that it certainly can work and already *is* working. Since 2005, major international civil society groups have endorsed diverse, often creative, BDS initiatives and positions that have caused serious alarm in Israel and among Israel lobbies in the US and beyond. The last few months alone witnessed some of the most significant indicators to date of this phenomenon. Veolia, after losing more than \$8B worth of contracts, has finally announced that it was withdrawing from the illegal Jerusalem Light Rail project [26]. In Canada, in the last days, the Centrale des Syndicats du Quebec (CSQ), the third largest labor federation in Quebec, representing 180,000 workers, passed a decisive BDS resolution [27]. In February, the Canadian Union of Public Employees (CUPE) Ontario's University Workers Coordinating Committee (OUWCC) at its annual conference endorsed [28] a boycott of Israeli academic institutions, keeping in mind that CUPE Ontario as a whole had adopted BDS years ago. The Quebec College Federation also joined the BDS campaign [29]. Independent Jewish Voices, perhaps the leading independent national Jewish organization in Canada, also recently voted overwhelmingly to adopt BDS [30], and so did the United Church of Canada in Ontario [31]. In Durban, South Africa, the COSATU-affiliated dock workers union refused in early February to offload an Israeli cargo ship, [32] reminding us of similar sanctions taken against South African ships during the apartheid era. An Australian dock workers union and a group of American progressive union leaders endorsed the South African BDS action. COSATU, the Irish Congress of Trade Unions (ICTU) and, most recently, the Scottish Trade Union Congress (STUC) have all joined the BDS campaign.

In the US, Hampshire College set a historic precedent [33] by announcing its divestment from six companies profiting from the Israeli occupation. Significantly, Hampshire was also the first college in the US to divest from apartheid South Africa in the 1970s.

In Wales, Cardiff University acceded [34] to demands by students and decided to divest from companies supporting the occupation. In the US, a campaign for the academic and cultural boycott was launched [35]. In France, where BDS had faced an uphill struggle for several years, a statement was issued after Israel's atrocities in Gaza by leading academics explicitly endorsing BDS to end Israel's impunity. La fédération syndicale unitaire (FSU), the biggest union of the French state civil service, with 163,000 members, also voted for BDS recently [36]. The British University and College Union reiterated its support for the logic of BDS, endorsing at its latest conference in May the idea of organizing an international trade union conference to discuss BDS strategies [37]. Major trade unions in the UK have also adopted BDS [38].

At the cultural boycott level [39], PACBI has convinced tens of leading artists and writers not to participate in festivals and events in Israel that violate the boycott. These have included Bono, Bjork, Snoop Dogg, the American writer Russel Banks, the legendary French director

Jean Luc Godard, and others. Prominent intellectual figures like John Berger, Arundhati Roy, Ken Loach, Roger Waters, John Williams and Naomi Klein have also committed themselves to the BDS campaign.

In perhaps the most important indicator of our success to date, this last May, at the annual AIPAC Policy Conference, AIPAC Executive Director Howard Kohr referred to the BDS campaign saying [40]:

“No longer is this campaign confined to the ravings of the political far left or far right, but increasingly it is entering the American mainstream: an ordinary political discourse on our T.V. and radio talk shows; in the pages of our major newspapers and in countless blogs, in town hall meetings, on campuses and city squares. ... These voices are laying the predicate for abandonment.”

He added:

“This is a conscious campaign to shift policy, to transform the way Israel is treated by its friends to a state that deserves not our support, but our contempt; not our protection, but pressured to change its essential nature.”

## **Conclusion**

Paulo Freire wrote [41]:

“As long as their ambiguity persists, the oppressed are reluctant to resist, and totally lack confidence in themselves. They have a diffuse, magical belief in the invulnerability and power of the oppressor. ... The oppressed must see examples of the vulnerability of the oppressor so that a contrary conviction can begin to grow within them. Until this occurs they will continue disheartened, fearful, and beaten.”

Today, Palestinians are not disheartened, fearful or beaten. Today, despite our deep anguish and the horrific injustices we are forced to endure, we have every reason to hope that right will ultimately prevail over might. The global BDS movement for Palestinian rights presents not only a progressive, anti racist, sophisticated, sustainable, moral and effective form of civil, non-violent resistance, but a real chance of becoming the political catalyst and moral anchor for a strengthened, reinvigorated international social movement capable of upholding the primacy of international law and reaffirming the rights of all humans to freedom, equality and dignified living. Our South Africa moment has finally arrived.

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\*Based on a presentation given at the Symposium on the International Court of Justice Advisory Opinion's 5<sup>th</sup> Anniversary, sponsored by United Civilians for Peace at the Hague on 9 July 2009.

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