

U.S. Legislations in Opposition to Palestinian Rights

Introduction:

This fact-sheet is an attempt to further explain how Palestinian rights, and those who defend those rights are affected internationally. Several organizations, governments and legislations are in direct opposition to Palestinian rights and to the work of certain Palestinian movements and human rights organizations. This opposition is shown in several grounds and of them is law. For instance, the recent American laws that affect Palestinians directly. Whether those laws affect funding received by the U.S. government or those which are anti the Boycott, Divestment, and Sanctions (BDS) movement, they show the politicization of American legislation that oppose Palestinian basic rights and also the rights of American citizen especially the rights to freedom of expression and the First Amendment right to participate in political boycotts.

Recent Substantial Cuts to Essential U.S. Humanitarian Aid for Palestinians

Background:

In 2018, the Trump Administration severely cut funding to Palestinians. Statements made by Trump suggest that these cuts may be intended to pressure the Palestinian Authority (PA) into participating in U.S.-led diplomacy on the Israeli-Palestinian peace process.¹ Nevertheless, PA officials have not reversed their decision to break off diplomatic contact with the U.S. following Trump's December 2017 recognition of Jerusalem as Israel's capital.²

The 2018 Funding Cuts:

- \$231.532 million of bilateral economic assistance originally intended for the West Bank and Gaza (including \$25 million for occupied Jerusalem hospitals) was repurposed.³
- The U.S. also ended humanitarian contributions to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).
 - U.S. funding for UNRWA in 2018 totaled \$65 million, a sharp cut from \$359.3 million in 2017.
 - On August 31, 2018, the State Department announced that the United States will not make any further contributions to UNRWA.⁴
 - This is greatly affecting UNRWA, which provides education, health care, and other forms of humanitarian assistance for around 5.4 million Palestinian refugees registered in the West Bank, Gaza Strip, Jordan, Lebanon, and Syria.⁵

¹Congressional Research Service: U.S. Foreign Aid to the Palestinians (December 12, 2018).

²Congressional Research Service: U.S. Foreign Aid to the Palestinians (December 12, 2018).

³Congressional Research Service: U.S. Foreign Aid to the Palestinians (December 12, 2018).

⁴State Department, Heather Nauert, Department Spokesperson, "On U.S. Assistance to UNRWA," Washington, DC, August 31, 2018.

⁵Congressional Research Service: U.S. Foreign Aid to the Palestinians (December 12, 2018).

- The U.S. contributed approximately one-third of UNRWA’s budget in 2017.⁶
- Regardless of the Trump Administration’s decision to cut funding in 2018, it was already unclear how much of the \$231.532 million Economic Support Fund (ESF) would be available for the Palestinians, as Congress had suspended all ESF that “directly benefits” the Palestinian Authority on March 2018 via the Taylor Force Act.⁷
 - The Taylor Act requirement to suspend ESF will apply to future-year funding unless and until Palestinian governing entities stop payments to individuals imprisoned for or killed while allegedly committing acts of terrorism, or to these individuals’ families.⁸

The Politicization of Humanitarian Aid:

- “Globally, U.S. humanitarian policy and provision of assistance has typically been based on need and intended to remain independent of politics.⁹” In the Palestine context, though, the Trump Administration has problematically and unethically used essential aid for vulnerable Palestinian refugees to create leverage in negotiations.
 - “In a January 2018 letter to the Trump Administration, 21 global humanitarian aid organizations expressed concern that the Administration’s decision to withhold funding from UNRWA was political rather than need-based. According to these organizations, such a decision was a ‘dangerous and striking departure from U.S. policy on international humanitarian assistance.’¹⁰
- The only major form of aid that continues unabated is for training and nonlethal equipment for Palestinian Authority civil security forces in the West Bank loyal to President Abbas.¹¹
 - This aid is aimed at improving rule of law in areas that the PA controls, and also at encouraging greater PA security coordination with Israel.¹²
 - “PA security forces have continued this coordination with Israel despite widespread opposition in Palestinian public opinion.”¹³
- While the overt politicization of humanitarian aid is a problematic development, U.S. aid to the Palestinians has always had significant restrictions attached. Annual appropriations legislation routinely contains the following conditions:¹⁴
 - No aid to Hamas or Hamas controlled entities.
 - No aid is permitted for a power-sharing PA government that includes Hamas as a member or that results from an agreement with Hamas.

⁶See 2017 donor contributions at https://www.unrwa.org/sites/default/files/overalldonor_ranking.pdf.

⁷Michael Wilner, “Pompeo: U.S. Blocked \$165M in Funding due to Palestinian Incitement,” jpost.com, October 11, 2018; USAID email correspondence with CRS, October 12, 2018.

⁸Congressional Research Service: U.S. Foreign Aid to the Palestinians (December 12, 2018).

⁹Congressional Research Service: U.S. Foreign Aid to the Palestinians (December 12, 2018).

¹⁰Rick Gladstone, “Aid Agencies Ask U.S. to Restore Palestinian Aid,” New York Times, January 25, 2018.

¹¹Congressional Research Service: U.S. Foreign Aid to the Palestinians (December 12, 2018).

¹²Congressional Research Service: U.S. Foreign Aid to the Palestinians (December 12, 2018).

¹³Congressional Research Service: U.S. Foreign Aid to the Palestinians (December 12, 2018).

¹⁴Congressional Research Service: U.S. Foreign Aid to the Palestinians (December 12, 2018).

- ESF assistance for the PA is prohibited if “the Palestinians initiate an International Criminal Court judicially authorized investigation, or actively support such an investigation, that subjects Israeli nationals to an investigation for alleged crimes against Palestinians.”¹⁵
- Similarly, ESF assistance for the PA is prohibited if the Palestinians obtain “the same standing as member states or full membership as a state outside an agreement negotiated between Israel and the Palestinians” in the United Nations or any UN specialized agency other than UN Educational, Scientific, and Cultural Organization (UNESCO).”¹⁶
- No aid is permitted for the PLO or for the Palestinian Broadcasting Corporation.
- No aid for PA personnel located in Gaza.

Anti-BDS Legislation:

Federal:

The Combating BDS Act of 2019 (*proposed*).

How It Works:

- “This bill is an attempt to “authorize” state and local governments to pass laws prohibiting the state from contracting with or investing in entities that boycott Israel. The bill says that such state and local laws are not pre-empted by federal law. It does not impose any new restrictions or prohibitions on the right to boycott.”¹⁷
 - This bill represents an illegal restriction upon free speech and political expression. The First Amendment has generally been understood by the courts to protect the right to political boycott.
 - The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has raised concerns that the bill would violate the United States’ international human rights obligations as an impermissible restriction on legitimate political expression.¹⁸

Update:

- The Senate passed its version of this bill on 4 February 2019 (77-23).
- The House version of the bill is expected to face more resistance, particularly from new members of Congress.¹⁹
 - Reps. Ilhan Omar (D-Minn.) and Rashida Tlaib (D-Mich.) have expressed support for Palestinian rights and the Boycott, Divestment, and Sanctions (BDS)

¹⁵P.L. 115-141, §7041(m).

¹⁶P.L. 115-141, §7041(m).

¹⁷Palestine Legal (New York, NY).

¹⁸David Kaye, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression.

¹⁹Palestine Legal (New York, NY).

movement and hold positions on two of the committees that would consider the bill.²⁰

State:

As of November 2018, 26 states have enacted laws infringing upon the right to boycott the Israeli state for its abusive and illegal practices.²¹

How They Work:

- While state anti-BDS laws vary, they tend to require businesses contracting with the state to affirm that they are not participating in a boycott of Israel.
- While these state laws do not explicitly prevent individuals from joining the BDS movement, that has been the affect in practice, as the laws apply to individuals who work as independent contractors.

Judicial Review of Anti-BDS Legislation:

The American Civil Liberties Union, prominent U.S. First Amendment scholars and U.S. Courts have generally agreed that Anti-BDS legislation unconstitutionally infringes upon First Amendment-protected expression and association.²²

State Anti-BDS laws “discriminate solely on the basis of the viewpoint of those impacted,”²³ penalizing individuals “solely because they choose to engage in protected expression disfavored by government officials in the states in question.”²⁴

Review of Case Law:

- *Koontz v. Watson* (Kansas 2018): The federal district court in Kansas found that requiring a teacher to certify that she would not boycott Israel violated the First Amendment right to participate in political boycotts.²⁵
 - This case was the first ruling regarding laws that aim to punish people for boycotting Israel.²⁶
 - The case was brought on behalf of Esther Koontz, who belongs to the Mennonite Church USA. Koontz said she participated in the boycott to protest the Israeli government’s treatment of Palestinians and to pressure the country to change its policies.²⁷

²⁰Palestine Legal (New York, NY).

²¹U.S. Campaign for Palestinian Rights, Jewish Voice for Peace, Palestine Legal.

²²*Knight First Amendment Institute at Columbia University*, Knight Institute Files Brief in Ninth Circuit on Behalf of Prominent Legal Scholars, Explaining that BDS Boycotts are Protected by the First Amendment (Jan. 24, 2019).

²³*American Civil Liberties Union*, Letter to Senators RE: Combating BDS Act (Jan. 28, 2019).

²⁴*American Civil Liberties Union*, Letter to Senators RE: Combating BDS Act (Jan. 28, 2019).

²⁵*Koontz v. Watson*, 283 F. Supp. 3d 1007 (D. Kan. 2018).

²⁶*American Civil Liberties Union*, ACLU... Law Requiring Contractors to Sign Document Promising Not to Boycott Israel (June 29, 2018).

²⁷*American Civil Liberties Union*, ACLU... Law Requiring Contractors to Sign Document Promising Not to Boycott Israel (June 29, 2018).

- *Jordahl v. Brnovich* (Arizona 2018): The federal district court in Arizona ordered a preliminary injunction against Arizona’s anti-BDS law, which required any company that contracts with the state submit a written certification that it is not currently boycotting Israel.²⁸ The case is currently under review in the 9th Circuit.
 - The case was brought on behalf of attorney Mikkel Jordahl, who has had a state contract to provide legal advice to Arizona inmates for 12 years.²⁹
 - “Jordahl wanted to use his one-person law firm to provide legal support to other organizations engaged in boycotts and related political expression, but the law’s certification requirement prevents state contractors such as Jordahl’s firm from participating in these activities.³⁰”

Conclusion

The denial of and violations against Palestinian freedoms and rights are codified in Israeli law, a practice and position that the United States has adopted in its direct opposition to internationally recognized Palestinian rights. Accordingly, this is implemented in its revoking and politicization of its financial responsibility to support Palestinian refugees, and in its legal repression against those who support Palestinian rights and freedoms within its borders. When we call upon the international community to hold the occupying power accountable to its multiple violations against humanitarian law and human rights law, it is in the same breath that we call upon those countries like the United States who pride themselves on their democracy. We call them to not only put pressure on the occupying power denying these liberties to Palestinians, but to also hold their own laws and policies up to the standards of supporting human rights and freedoms of speech and boycott.

²⁸*Jordahl v. Brnovich*, 336 F. Supp. 3d 1016 (D. Ariz. 2018).

²⁹*American Civil Liberties Union*, Challenge to Arizona Law Targeting Boycotts of Israel (Sep. 27, 2018).

³⁰*American Civil Liberties Union*, Challenge to Arizona Law Targeting Boycotts of Israel (Sep. 27, 2018).