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"Impact of the Boycott, Divestment, and Sanctions Movement"

Mr. Chairman, Members of the Oversight Committee, thank you for inviting me to testify today on this important and timely issue.

In the ten years since it commenced, the global Boycott, Divestment and Sanctions movement, or BDS as it is called, has slowly but steadily risen in visibility. I'd like to focus today on the role that the BDS movement has been playing recently in the U.S, particularly with regard to recent Congressional action.

In order to do that, I first want to take a moment to identify just what we're talking about when we refer to BDS. The movement began in July 2005 with a joint call from a number of Palestinian civil society organizations, with three main demands: An end to the occupation that began in 1967; equal rights for Palestinians citizens within Israel; and protecting and promoting the rights of Palestinian refugees to return to their homes in what is today Israel. The term "BDS" is widely understood to refer to the network of grassroots activists who are part of a global movement to encourage boycotts, divestment from, and ultimately international sanctions against Israel to achieve these goals.

This movement – its goals and its activism – is distinct from the many peace activists in Israel, Palestine, the United States and elsewhere, who, in their effort to preserve the possibility of a two-state solution to the Israeli-Palestinian conflict, call for boycotts of settlement products and divestment from businesses profiting from the 48-year old occupation of the West Bank, Gaza and East Jerusalem.

Crucially, this movement is also distinct from actions and policies of the European Union and the governments of some member states that distinguish between Israel within the pre-1967 lines – known as the Green Line – and the occupied territories. A recent report by the European Council on Foreign Relations emphasizes that these actions and policies do not represent a policy shift by the European Union, but simply more faithful adherence to the EU's existing laws.

The report states, in part, "The EU has never recognized the legality of Israeli settlements in the occupied territories (including those in East Jerusalem and the Syrian Golan Heights that have been formally annexed by Israel) and consequently does not consider agreements signed with Israel to also apply to Israeli settlement-based entities." The report also cites a February 2010 ruling from the European Court of Justice (ECJ) stating that agreements reached with Israel must be interpreted in light of the EU's agreements with the Palestinians, which stipulate that only Palestinian authorities can issue origin certificates for goods from the West Bank, including from Israeli settlements. As a result, the report states, "The European Commission and the EEAS have gradually been compelled to take greater care in ensuring the EU's correct adherence to European law in its bilateral relations with Israel."

The key distinction here is between Israel within the Green Line, and the occupied territories. Israel is understandably concerned about the potential consequences of Europe, its largest trading partner, more energetically enforcing these laws. The EU has, for years, looked the other way on these regulations in the hope that the occupation would soon end and that the differentiation between Israel and the settlements would become moot. As the ECFR report states, "[D]ue to the fact that as cooperation with Israel expanded in the 1990s, the EU treated Israel's occupation as temporary in the belief that the imminent success of the Oslo peace process would make added clarifications a moot point. The EU therefore avoided implementing a legal regime of differentiation (between Israel and the occupied territories) during this period."

But in recent years, as the peace process has stalled, most recently with the collapse of Secretary of State Kerry's effort in April of last year, the EU has renewed an effort to begin more aggressively enforcing their existing laws. It is important here to point out that these laws are fully consistent with long-standing American policy that similarly does not recognize the legitimacy of Israeli settlements, unless and until their status is redefined in negotiations.

This is where we come to the recent action by Congress and the response from the State Department. With the stated intention of protecting Israel from BDS, a provision was recently added to the Trade Promotion Authority bill– a provision that implied a significant shift in the policy of the United States since 1967. The provision requires the U.S. Trade Representative to discourage European Union countries from boycotting "Israel or persons doing business in Israel *or Israeli-controlled territories*" (emphasis added) as part of free-trade negotiations between the U.S. and the EU. In doing so, the amendment conflates Israel and the occupied territories. By blurring this important distinction, a dangerous precedent could be set for treating Israeli settlements beyond the 1967 lines no differently from the internationally recognized State of Israel. At the very least, it would create confusion amongst our allies with regard to U.S. policy regarding the occupied territories and their ultimate disposition.

In addition, conflating Israel and the settlements for the purposes of U.S. trade negotiations represents a clear threat to the two-state solution itself, undermining the our country's ability to effectively broker a peace agreement between the Palestinians and Israelis.

This is why it was important and appropriate for the State Department to offer a clarification as it did upon passage of the trade bill. State Department spokesman John Kirby noted that, "The United States government has … strongly opposed boycotts, divestment campaigns, and sanctions targeting the State of Israel, and will continue to do so. However, by conflating Israel and 'Israeli-controlled territories,' (this) provision of the Trade Promotion Authority legislation runs counter to longstanding U.S. policy towards the occupied territories, including with regard to settlement activity." Mr. Kirby went on to state that, "The U.S. government has never defended or supported Israeli settlements and activity associated with them and, by extension, does not pursue policies or activities that would legitimize them."

It is important to recall that U.S. law already protects Israel against boycotts initiated by foreign governments. The Export Administration Act of 1979 and the Ribicoff Amendment to the Tax Reform Act of 1976 were enacted to protect Israel from the Arab League's boycott against the

State of Israel. The amendment to the fast-track bill adds nothing in this regard. Rather, it serves only one purpose: protecting settlements from pressure.

Ironically, this very conflation is precisely what the most radical elements in the BDS movement strive to achieve. Those who believe that the only solution to the conflict is the end of Israel as a Jewish state and the creation of a single state in its place reject any distinction between, for example, the settlement of Ariel in the occupied territories and the city of Tel Aviv. Similarly, those who support a messianic vision of "Greater Israel," which requires permanent Israeli control of the occupied territories, reject any distinction between Haifa and the settlements inside Hebron. For those who support a two-state solution that includes a secure, democratic and Jewish state of Israel living side by side with a secure and independent Palestinian state, this conflation is extremely problematic.

There is another conflation here that is also of concern. When questions arise about the possible impact of BDS, there is often no distinction made between the effects of the BDS movement and the actions taken by European or other trading partners of Israel. This ends up overstating the impact of the BDS movement, both for its supporters and detractors.

There is no evidence that the European Union's policies and actions with regard to settlements are based on the actions of the BDS movement. On the contrary, it is the collapse of the peace process, the deepening of Israel's occupation and the possible foreclosure of the two-state solution that have motivated these European moves. In a letter to European Union Foreign Minister Federica Mogherini in April, sixteen European Foreign Ministers urged the labelling of products originating in the settlements, writing that: "European consumers must indeed have confidence in knowing the origin of goods they are purchasing. Green Line Israel and Palestinian producers will benefit from this." Far from being motivated by the BDS movement, the ministers made it clear that it was the stalled peace process that provided the impetus for their recommendation. The goal was, in their words, "the preservation of the two-state solution."

Likewise in the United States, the most prominent examples of concrete boycott- and divestment-related activism in the Israeli-Palestinian arena have fact been focused unambiguously not on Israel but on the settlements and the occupation. These developments are the product of frustration with the failure of diplomacy to bring an end to the occupation, and a desire to preserve the possibility of a two-state solution. As in Europe, the actions involved are distinct from the efforts and goals of the BDS movement. For example, the Presbyterian Church (USA) heard a great deal from the BDS movement over the years in which it debated the decision it eventually adopted in 2014 to divest from companies it believed were profiting from Israel's occupation. Yet the Church made it clear in its decision that it was not acting in concert with the BDS movement, but from its own principles – and it focused its activism not on Israel, but explicitly on the occupied territories.

In a statement made after the vote to divest, PC (USA) issued a statement saying, "[O]ur action to selectively divest was not in support of the global BDS movement. Instead it is one of many examples of our commitment to ethical investing. We are pressed and challenged to follow our faith values and commitments in all times and in all areas of our lives. The occupation must end.

All peoples in Israel and Palestine should live in security, freedom, and peace. This action is but one aspect of our commitment to work to this end."

PC (USA) went on to explicitly reiterate its support for the existence of the State of Israel and for the two-state solution, clarifying that, "This action on divestment is not to be construed or represented by any organization of the PC (USA) as divestment from the State of Israel, or an alignment with or endorsement of the global BDS (Boycott, Divest and Sanctions) movement."

As of today, the BDS movement, in and of itself, is not a threat to Israel, either economically or in terms of security. The main impact of the BDS movement has been in generating an often-divisive debate, on American campuses, among academics faced with campaigns for academic boycotts and in getting a handful of musicians to cancel or publicly declare their intent not to perform in Israel.

To the extent that one sees BDS actions as part of an effort to "de-legitimize" Israel, they should certainly be addressed, but not through legislation. Israel has the protection it needs and deserves under existing U.S. law. The arguments raised by the BDS movement in academic and other civil society institutions should be addressed, in the American tradition, with thoughtful, considered and ethical counter-arguments.

I would also suggest that it is a mistake to focus on the BDS movement while ignoring the main reason for its continued growth, which is the failure to end the occupation that began in 1967 and achieve Palestinian national liberation and sovereignty. If one is genuinely concerned about the impact of the BDS movement, the surest way to take the wind out of its sails would be to work diligently to achieve those goals, and act against efforts which prevent them.

Moreover, it would be hugely counterproductive to give BDS an unearned win by cooperating in any way with the conflation of Israel and the occupied Palestinian territories. We must recognize legitimate actions, whether we agree with them or not, by European governments as well as civil society actors that draw a distinction between the settlements and the State of Israel. We can and must support Israel in defending herself against actions that genuinely threaten its security and legitimacy. This has been a consistent American position since Israel's birth.

Another position in which America has been consistent has been in opposing the creation of Israeli settlements beyond the Green Line, which have been deemed illegitimate and an obstacle to peace by every U.S. president since 1967. Efforts to blur that distinction are just as dangerous to Israel's existence as a Jewish and democratic state as attacks on Israel's legitimacy itself. It is entirely consistent with longstanding U.S. policy, and indeed necessary to preserve the ultimate goal of a two-state solution, to continue to preserve that distinction in U.S. policy and law.

I thank you, Committee members, for your time and attention.