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Antisemitism on Campus: A New Look at Legal Interventions

Lesley Klaff*

British universities have become key conduits in the global assault on Israel's legitimacy. This paper analyzes the extent and the impact of the UK's anti-Zionism campaign and argues that the most effective "fight-back" strategy now requires legal intervention.

Key Words: Hate Speech, Palestinians, Israelis, Law

THE PROBLEM

According to the Tel-Aviv based Reut Institute, a think tank that examines the threat to Israel's national security, the United Kingdom has become the centre of a systematic assault on Israel's continued right to exist¹. Its November 2010 report, *Building a Political Firewall against the Assault on Israel's Legitimacy*, declares that the assault unites Middle East resistance networks with allies on the far-left in a "red-green alliance" that seeks to cause Israel to implode on the model of apartheid South Africa.²

UK universities play an essential and active role in this delegitimization campaign. In his December 2010 Report *Mapping the Organizational Sources of the Global Delegitimization Campaign against Israel in the UK*, Ehud Rosen of the Jerusalem Center for Public Affairs notes that the British academy has become a "mainstreaming" agent in the international effort to deny Israel's right to exist as a Jewish state.³ University campuses in the UK frequently provide a platform for controversial figures, including representatives of political Islam, to demonise and vilify Israel, claiming academic freedom as justification. Students, because of their youth, enthusiasm, and traditional political involvement, are a primary target audi-

1. Martin Bright, "London's hub of Israel hate", *Jewish Chronicle*, 2 December 2010, p. 1, <http://www.thejc.com/news/uk-news/42063/londons-hub-israel-hate> (accessed January 5, 2011)

2. The Reut Institute, "Building a Political Firewall against the Assault on Israel's Legitimacy: London as a Case Study," November 2010, [http://www.reut-institute.org/data/uploads/PDFver/20101219London Case Study-pdf](http://www.reut-institute.org/data/uploads/PDFver/20101219London%20Case%20Study.pdf) (accessed January 5, 2011)

3. Ehud Rosen, *Mapping the Organizational Sources of the Global Delegitimization Campaign against Israel in the UK*, http://www.jcpa.org/text/Mapping_Delegitimization.pdf (accessed December 23, 2010)

ence for such anti-Zionist efforts.⁴ These campaigns are driven by far-left groups, such as the Socialist Workers' Party (SWP), the Stop the War Coalition (StWC), and Respect, all of which operate active student societies, as well as by student Islamic societies,⁵ whose role is to "provide the Muslim voice on campus."⁶ Student Islamic societies work closely with Palestine student societies, which exist on several leading university campuses.⁷ The Palestine Solidarity Campaign (PSC) also appeals to students with its own targeted publications.⁸ As a result, Jewish students have reportedly experienced rising anti-Semitism on campus in the form of anti-Zionist expression⁹ since the start of the Palestinian Intifada in September 2000.¹⁰

UK student Islamic societies have deep ideological roots. The 2008 Report for the Centre for Social Cohesion, "Islam on Campus: A Survey of UK Student Opinions,"¹¹ whose remit was to discover the extent of Islamic radicalism on UK university campuses, revealed that student Islamic societies come under an umbrella organisation, The Federation of Student Islamic Societies (FOSIS), which grew out of Islamist activism in 1960s Britain.¹² Founded by leading Muslim Brotherhood member Said Ramadan in 1962, FOSIS has strong links with national Islamic organisations including the Muslim Council of Britain (MCB), the Muslim Association of Britain (MAB), Jamiat Ihyaa Minhaaj Al-Sunnah (JIMAS), the educational Muslim foundation Utrujj, and the Islamic Foundation (IF). The Muslim Association of Britain is the British branch of the Muslim Brotherhood. It is not surprising, then, that FOSIS and its constituent Islamic Societies regularly book MAB leaders and activists, many of whom support the Muslim

4. Ibid. p. 43

5. Ibid

6. Islam On Campus: A Survey of UK Student Opinions, Centre for Social Cohesion Report 2008, http://www.socialcohesion.co.uk/files/1231525079_1.pdf (accessed December 31, 2010)

7. Ibid

8. Ehud Rosen, op. cit. note 3, p. 43

9. The term "expression" is interchangeable with the term "speech" and includes "conduct", "oral and written words" and "symbols," *Harris v. International Paper* 765 Supp. 1509 (1991).

10. Daniella Peled, "Jewish Students Say U.K. Groups Ignore Anti-Semitic Acts on Campus", <http://www.jewishfederations.org/page.aspx?id=104172> (accessed December 31, 2010); "Are Jewish students at risk of anti-Semitism on campus?" www.debatewise.com/debates/1927-are-jewish-students-at-risk-of-anti-Semitism-on-campus (accessed December 31, 2010)

11. 2008 Report, op. cit. note 6

12. 'Introduction,' *FOSIS* website, http://www.fosis.org.uk/about/intro_to_fosis.php (accessed October 31, 2010)

Brotherhood, to speak on campus.¹³ One such speaker, Azzam Tamimi, has been identified as a member of Hamas, the Brotherhood's Palestinian branch.¹⁴ In a lecture to students at Queen Mary University in 2007, Tamimi referred to Zionism as "the most inhumane project in the modern history of humanity,"¹⁵ and before students at SOAS in 2010, he praised Hamas and called for Israel to "come to an end".¹⁶ After speaking at Queen Mary donations were collected for Interpal, a UK-based Palestinian charity which has been investigated by the Charity Commission for alleged links to Hamas¹⁷ and has already been banned in Australia, Canada and the United States because of those links. The Centre for Social Cohesion's findings about the links between terror organisations and FOSIS were corroborated by Ehud Rosen's December 2010 report for the Jerusalem Center for Public Affairs.¹⁸

UK student Islamic societies' are further linked to the Palestine/Israel conflict through their association with Friends of Al-Aqsa, an organisation established in 1997 to "defend the human rights of Palestinians and protect the sacred al-Aqsa Sanctuary in Jerusalem."¹⁹ This is a lobby group which campaigns against alleged human rights abuses by Israel and advocates a single Palestinian state. It publishes leaflets about "Israeli war crimes" and "Israeli apartheid policies" and calls for a boycott of Israeli products and academic institutions.²⁰ In turn, FOSIS distributes Friends of Al-Aqsa material to all student Islamic societies, with the result that the "Palestinian struggle" is characterised on UK campuses as a "Muslim struggle."²¹ Friends of Al-Aqsa also promote Hamas: former leader of Friends of Al-Aqsa, Ismail Patel, said that the group aims to "dispel the notion that Hamas

13. 2008 Report, op. cit. note 6

14. *Commons Hansard*, 18 December 2003, Column 1763, remarks by Louise Ellman MP, cited in the 2008 Report, op. cit. note 6

15. 2008 Report, op. cit. note 6

16. <http://www.thejc.com/news/uk-news/27149/police-investiage-azzam-tamimi-soas-talk> (accessed May 29, 2010)

17. 'Statement from the Charity Commission on the Palestinian Relief and Development Fund', *Charity Commission* <http://www.charity-commission.gov.uk/news/intstate.asp> cited in 2008 Report, op. cit note 6

18. Op. cit. note 3

19. 'About Us', *Friends of Al-Aqsa* website, http://www.aqsa.org.uk/FRIENDS_OF_ALAQA/AboutUs/tabid/91/language/en-US/Default.aspx (accessed December 31, 2010)

20. 2008 Report op. cit. note 6

21. Azzam Tamimi, Queen Mary University, 29 November, 2007, 2008 Report, op. cit. note 6

is barbaric, and that it cannot be dealt with.”²² He also pledged his support for the terrorist organisation.²³ Speaking at an Action Palestine event at the University of Manchester on 10 November 2007, he told the students present, “I think [Hamas] is one of the noblest resistance movements I’ve come across.”²⁴ Patel was responsible for drafting much of the literature that was distributed among student Islamic societies.

Given the political character of FOSIS it is not surprising that student Islamic societies at UK universities have invited a series of radical Islamist speakers onto campus to address students about the evils of Zionism and Israel. This happened most recently on December 6, 2010, when the Student Union Palestine Society at the London School of Economics (LSE) invited Abdul Bari Atwan to speak. Bari Atwan is editor-in-chief of the London-based *Al Quds Al-Arabi* newspaper. He had previously courted controversy in 2007 when he was recorded on video saying, “If the Iranian missiles strike Israel – by Allah, I will go to Trafalgar Square and dance with delight if the Iranian missiles strike Israel.”²⁵ Concerned that a similar situation might arise with his upcoming talk, the LSE Student Israel Society requested its own speaker to counter-balance Tamimi’s views. Their request was turned down.²⁶ The Union of Jewish Students (UJS) had also agreed a set of conditions with LSE’s student union before the event, but none of these were honored.²⁷

Predictably given his 2007 expression of joy at the prospect of Israel’s annihilation, Bari Atwan’s lecture, which was chaired by senior LSE lecturer, Professor Martha Mundy of the British Committee for the Universities of Palestine (BRICUP), was anti-Semitic. Not only did its title, *How much influence does the Zionist Lobby exert on US and UK Foreign Policy?* explicitly invoke a classic Jewish conspiracy trope, but the lecture’s contents provoked several distinct defamations against Jews, including the allegation that Jews are Nazis.²⁸ Jewish students who attended the lecture reported that they felt “intimidated by the speaker and frightened by the

22. Ismail Patel speaking at an Action Palestine event, University of Manchester, 10 November 2007, cited in the 2008 Report, op. cit. note 6

23. 2008 Report op. cit. note 6

24. Op. cit. note 17

25. Robyn Rosen, “How was this hate-fest allowed on campus?” *Jewish Chronicle*, 10 December 2010, p. 1

26. Ibid

27. Ibid

28. Press Statement of the LSE Students’ Union Israel Society and Union of Jewish Students, 7th December 2010, <http://www.ujs.org.uk/news/563/ujs-and-israel-society-statement-on-abdel-bari-atwan-talk-at-lse/> (accessed December 8, 2010)

response of the audience”, which was hostile.²⁹ The President of the LSE Israel Society, who walked out of the event, said “I felt extremely intimidated, uncomfortable and fearful. As I left, people were jeering and saying, ‘go get her’”³⁰ Thirty other Jewish students were compelled to leave the lecture prematurely because they felt intimidated.³¹ Four days later *The Jewish Chronicle* led with the headline, “How Was This Hate-Fest Allowed on Campus?”³²

THE RESPONSE

The official response by British universities to the Centre for Social Cohesion report was to minimize its significance. Referring, inter alia, to the report’s findings that 32 per cent of the Muslim students polled said that killing in the name of religion is justified, Diana Warwick, Chief Executive of Universities UK, said: “We do not feel this report is a fair reflection of the views of British Muslim students. Universities work hard to ensure community cohesion on campus so we find it unhelpful to target one particular group within our diverse communities of students and staff.”³³ She made no reference to the Report’s findings that through FOSIS, UK student Islamic societies are ideologically bound up with terrorist organisations; nor did she make any reference to their role in the promotion of anti-Zionist rhetoric on campus through the distribution of Friends of Al-Aqsa literature and through their regular invitations to radical Islamist speakers. Accordingly, the official representative body, Universities UK (UUK), missed an important opportunity to address Islamic campus anti-Zionist expression, which constitutes anti-Semitic campus hate-speech.³⁴

Diana Warwick’s response to the 2008 CSC report was predictable: UK universities believe that they are the right places for unpopular and even offensive opinions to be aired and challenged; it is seen as part of their

29. Ibid.

30. Robyn Rosen, op. cit. note 25

31. Ibid

32. Ibid

33. UUK Media Release in response to Centre for Social Cohesion Report 2008, <http://www.universitiesuk.ac.uk/Newsroom/Media-Releases/Pages/UniversitiesUKresponsetoIslamoncampusreport28/07/2008> (accessed December 31, 2010)

34. For a discussion of the similarities between anti-Zionist expression and anti-Semitism generally, see Manfred Gerstenfeld, “Anti-Israelism and Anti-Semitism: Common Characteristics and Motifs,” *Jewish Political Studies Review*, vol. 19, nos. 1 – 2 (Spring 2007); and Lesley Klaff, “Anti-Zionist Expression on the UK Campus: Free Speech or Hate Speech?” *Jewish Political Studies Review*, vol. 22, nos. 3 – 4 (Fall 2010)

fundamental mission and character³⁵. Yet Lucy James, Research Fellow with the Quilliam Foundation, a counter-extremism think tank, thinks that “things are getting worse and universities have done little or nothing”³⁶ to counter the growth of an extremist Islamic ideology on campus that impacts on Jews and other minorities.³⁷ As a result, universities are “absolutely critical”³⁸ to promoting the spread of Islamic extremism and the delegitimization campaign against Israel.

Following the Caldicott report³⁹ on the radicalisation of Umar Farouk Abdulmutallab, (arrested on Christmas Day 2009 for attempting to blow up a US aeroplane) while a student at University College London (UCL), Universities UK set up a working group to look into the issue of inviting representatives of political Islam to speak on campus. This is a welcome development, as is the recent *Jewish Chronicle* report that following the apparent suicide bombing in Sweden on December 11, 2010, by a Bedfordshire University graduate radicalised on campus – together with the Abdul Bari Atwan incident at the London School of Economics on December 6, 2010, which resulted in a police investigation – that UK universities are beginning to take the issue of Islamic campus extremism more seriously.⁴⁰

It is also worth noting that Universities UK is expected to publish guidelines for universities on how to deal with campus extremism in February 2011.⁴¹ Their report will outline how universities can “best protect and promote freedom of speech and academic freedom, whilst taking appropriate action to prevent violent extremism.”⁴² Government Universities Minister, David Willets has announced that he is waiting for the publication of the UUK guidelines – together with a similar document drawn up by the

35. Matthew Reisz, “Contravene or intervene,” *Times Higher Education*, 6 January 2011, <http://www.timeshighereducation.co.uk/story.asp?sectioncode=26&storycode=414746> (accessed January 7, 2011)

36. Ibid

37. Lucy James, Quilliam Briefing Paper, *Radicalisation on British University Campuses: a case study*, 18 October 2010, <http://www.quilliamfoundation.org/images/stories/pdfs/racialisation-on-british-university-campuses.pdf?dmi=JI3> (accessed January 7, 2011)

38. Matthew Reisz, op.cit. note 35

39. Umar Farouk Abdulmutallab, *Report to UCL Council of Independent Inquiry Panel*, September 2010, <http://www.ucl.ac.uk/caldicott-enquiry/caldicott-report.pdf> (accessed January 7, 2011)

40. Marcus Dysch, “Universities show signs of taking issue seriously,” *Jewish Chronicle*, p. 6, 16 December 2010, <http://www.thejc.com/news/uk-news/42702/universities-show-signs-taking-issue-seriously> (accessed December 31, 2010)

41. Ibid

42. Matthew Reisz, op. cit. note 35

National Union of Students (NUS) – before outlining the government’s response.⁴³ In the meantime, David Cameron said in *Prime Minister’s Question Time* on December 15, 2010, “We have not done enough to deal with the promotion of extremist Islamism in our country. . .to de-radicalise our universities we have to take a range of further steps.”⁴⁴

The current willingness of Universities UK to revisit the issue of campus extremism indicates their recognition that there is a problem in the British academy with extremism and hate speech. This is due in considerable measure to the interventions of the organised Jewish community, namely the Board of Deputies of British Jews, the Jewish Leadership Council and the Community Security Trust (CST), who have recently made official representations to Universities UK about the problems that on-campus anti-Zionist expression causes for Jewish students. In a statement that clearly registers their displeasure at the state of affairs, Jonathan Arkush senior vice-president of the Board of Deputies, said: “Communal concerns about the wellbeing of Jewish students on campus are valid and the Board takes the subject extremely seriously, as our actions to date have demonstrated.”⁴⁵

The organised Jewish community should be commended for its interventions with Universities UK and also with the Universities Minister, who was recently met by a delegation from the Union of Jewish Students (UJS), the All-Party Parliamentary Group against Antisemitism, and the CST to discuss the issue of anti-Semitic hate speech on campus⁴⁶. Their proactive intervention against anti-Zionist expression on campus comes just as a debate is emerging in the UK about the best way to respond to the delegitimization campaign.

TO INTERVENE OR NOT TO INTERVENE?

Dr. Winston Pickett, former director of the European Institute for the Study of Contemporary Antisemitism, has spoken of the importance of *responding* to anti-Semitism by means of strategic interventions. In his paper, *Interventions against Antisemitism in the UK: Strategic Topologies*, delivered at the International Association for the Study of Antisemitism Conference, Yale University, on August 25, 2010, he suggests that there are four broad areas which we can use to intervene strategically to stop, contain, curtail, or neutralize the impact of anti-Semitism. These are legal,

43. Ibid

44. Ibid

45. Op. cit note 40

46. Ibid

political, educational, and cultural⁴⁷.

This is a functionalist approach⁴⁸ to anti-Semitism which is currently receiving considerable attention in the UK with respect to the delegitimization campaign. The Reut Institute report calls on British Jews to establish a multi-tiered grassroots movement to take on Israel's opponents and persuade liberal opinion that much of the activity of the "delegitimizers" is driven by UK-based Islamists and the far-left.⁴⁹ It also challenges the Jewish leadership to "allow for innovative thinking, new tools and aggressive experimentation that usually takes place outside of the established community."⁵⁰ In response, Robin Shepherd, European Affairs Director of the Henry Jackson Society and author of *A State Beyond the Pale: Europe's Problem with Israel*, doubts the value of trying to "modify" the views of the European liberal-left because of their "hard core" nature.⁵¹ He notes that they are "in thrall to a Palestinian narrative, which sees Zionism as a racially exclusivist ideology and the Palestinians themselves as an oppressed third world minority, while simultaneously blaming Israel for the absence of a two-state solution rather than Palestinian rejectionism."⁵² Martin Bright, veteran analyst for *The Jewish Chronicle*, also doubts the feasibility of the Reut Institute's recommendation that British Jews create a 'grassroots movement'.⁵³ He suggests that any 'grassroots' campaign "will need to be a campaign in defence of democratic values which builds bridges with the students fighting the totalitarian regime in Tehran and the brave women and human rights activists fighting extremist Islam around the world."⁵⁴

Pickett agrees that targeting left-liberal opinion in Britain is not feasible, not because they cannot be convinced, but because such a strategy would not be a rallying point for large numbers of British Jews.⁵⁵ He suggests that British Jews might be more motivated by engaging in the kind of coalition building that American Jews have pursued so successfully over

47. Winston Pickett, *Interventions against Antisemitism in the UK: Strategic Topologies*, Paper delivered at the IASA/YIISA Global Antisemitism International Conference, 25 August, 2010

48. Ibid

49. "Building a Political Firewall", op. cit. note 2

50. Martin Bright, op. cit. note 1

51. Robin Shepherd, "Plan fought with danger", *The Jewish Chronicle*, 2 December, 2010, p. 14 <http://www.thejc.com/comment-and-debate/analysis/42101/plan-fraught-danger> (accessed January 5, 2011)

52. Ibid

53. Martin Bright, op. cit. note 1

54. Ibid

55. Personal e-mail correspondence from Winston Pickett, 5 January 2011

the years⁵⁶. As a possible example and model for British Jewry, he points to the initiative shortly to be launched in the United States in which The Jewish Council on Public Affairs (JCPA) and the Jewish Federations of North America (JFNA) have enlisted the help of sympathetic non-Jewish allies to counter anti-Israel delegitimizing initiatives.⁵⁷ This project will work alongside Israel and key organizational partners in the US and Canada, not only to stand up against anti-Israel initiatives, but also to anticipate and prepare for future challenges and actively promote a fair and balanced picture of the Middle East among key constituencies.⁵⁸

Leading British journalist Melanie Phillips has also joined in the debate. Noting the scale of the delegitimization campaign in the UK, she suggests that there are “two preconditions to an effective fight-back.”⁵⁹ These are to understand the nature and scale of the threat to Israel, and then to form effective structures of resistance.⁶⁰ She calls on British Jews to fight “on the battleground where the attack is actually being mounted against them.”⁶¹ This strategy requires two different tactics: one involves a proactive education approach with respect to those opponents of Israel who are capable of rational thought; the other requires destroying the influence of those opponents of Israel who are not so capable because they are bigots.⁶²

To return to the orchestration of the delegitimization campaign in the British academy: the organised Jewish community’s recent interventions with Universities UK and the government can be considered to be educational and political. There is currently a compelling argument to be made that legal intervention is also necessary.

LEGAL INTERVENTION AGAINST ANTI-ZIONIST INVECTIVE

Although Universities UK now appear to recognise that there is a problem with Islamist extremism in the British academy, it is unlikely that

56. Ibid

57. Ibid, and see also, M. Raffel & M. Kotzin, “Introducing the Israel Action Network”, *The Jerusalem Post*, 26 October 2010, <http://www.jpost/Opinion?Op-EdContributors/Article.aspx?id=192892> (accessed January 5, 2011)

58. Winston Pickett, op. cit note 55

59. Melanie Phillips, “Nothing Short of a Multi-Layered Civilisation Crisis: The Challenge of Public Diplomacy vis-à-vis the Delegitimization of Israel”, address to Ariel Conference on Law and Mass Media, 30 December 2010, in Tom Gross Email Service, “Mideast Dispatch Archive”, <http://www.tomgrossmedia.com/mideastdispatches/archives/001161.html> (accessed January 7, 2011)

60. Ibid

61. Ibid

62. Ibid

their February 2011 guidelines will be effective in turning back the tide of anti-Zionist expression on campus. Ehud Rosen's recent report for the Jerusalem Center for Public Affairs⁶³ makes it clear that the delegitimization campaign on UK university campuses is not an isolated phenomenon. It has deep ideological roots which can be traced back to the Muslim Brotherhood, whose influence continues. In this way it is linked to Hamas and global terrorism. Moreover, there are other organizations involved in the campaign, such as Muslim Association of Britain (MAB) and the British Muslim Initiative (BMI), Middle East Monitor (MEMO), The Islamic Human Rights Commission (IHRC), and even The Campaign for Nuclear Disarmament (CND) and Jews for Justice for Palestinians (JfJfP). The British far-left, such as the Socialist Workers' Party (SWP) and The International Marxist Group (IMG), and other groups deeply hostile to Israel, are complicit as well.

UK universities are simply acting as *carriers*, or *enablers* of the delegitimization message. The British academy is a *mainstreaming* agent.⁶⁴ In other words, Rosen confirms the findings of the 2008 *Centre for Social Cohesion Report*, but goes much further, particularly in identifying the operation on campus of the "red-green alliance"⁶⁵ between far-left and international Islamist groups, and in identifying the UK academy as an active *agent* in the *global* delegitimization campaign against Israel. One might ask how mere guidelines can effectively provide opposition to such an overwhelming phenomenon.

Indeed, Universities UK issued guidelines to tackle hate crimes and intolerance on campus in 2005⁶⁶ and these were not effective. At the time of their release, Professor Leslie Ebdon, Vice Chancellor of the University of Bedfordshire and chair of the committee that promulgated the guidelines said, "The key principle for dealing with hate crimes and intolerance on campus is to understand that all staff and students have the right to work, study and live without fear of intimidation, harassment and threatening or violent behaviour. The key ingredient for the preservation of academic freedom is tolerance and respect for diversity."⁶⁷ These guidelines had no impact because they were evidently distributed among university vice-chancellors and then systematically flouted. Extremists continued to take control

63. Ehud Rosen, op. cit. note 3

64. Ibid p. 43

65. Ehud Rosen, op. cit. note 3, p. 17

66. "Promoting good campus relations: dealing with hate crimes and intolerance," Media Release 8/11/2005 <http://www.universities.ac.uk/Newsroom/media-Releases/Pages /MediaRelease-441.aspx> (accessed January 1, 2011)

67. Ibid

of student Islamic societies and promote an extremist ideology on campus that both encouraged segregation and compromised student safety.⁶⁸

UK universities have even ignored *government* guidelines designed to combat Islamic extremism on campus, such as those issued in November 2006⁶⁹, and those issued in January 2008⁷⁰ that specifically advised universities to draw up a national watch list of guest speakers who should be banned from speaking on campus. Since then, 39 universities have been identified by MI5 as “vulnerable to violent extremism”⁷¹; and a recent 2010 report for the Centre for Social Cohesion has identified twenty people who have studied at British universities and who also “have committed acts of terrorism or have been convicted for terrorism-related offences, in the UK and abroad.”⁷² Four had held senior positions in university Islamic societies⁷³. Anthony Glees, director of the Centre for Security and Intelligence at the University of Buckingham claims that we are witnessing “a failure on the part of higher education institutions to realise what is happening under their noses, on their watch and in their time.”⁷⁴ British journalist Nick Cohen has referred to “the limitless capacity for self-delusion of British academe.”⁷⁵

Accordingly, since the issuance of the guidelines of 2005, 2006, and 2008, and despite them, Jewish students have been subjected to harassment and intimidation on campus caused by an extensive campus tour conducted by Hizballah representative, Ibrahim Mousawi; a series of seminars at SOAS given by Kamal Helbawy of Muslim Brotherhood; a campus tour, entitled, “Israel, the Palestinians and Apartheid: The Case for Sanctions and Boycott” led by PACBI founding member Omar Barghouti; a lecture at SOAS by Hamas member Dr. Azzam Tamimi where he called for the destruction of Israel and said “if fighting for your homeland is terrorism, I

68. Lucy James, *op. cit.* note 37

69. “Promoting Good Campus Relations: Working With Staff and Students to Build Community Cohesion and Tackle Violent Extremism in The Name of Islam at Universities and Colleges”, Department for Education and Skills, November 2006, <http://www.dfes.gov.uk/hegateway/uploads/ExtremismGuidancefinal.pdf> (accessed January 1, 2011)

70. Alexander Frean, “Universities join battle against terror as guidelines are agreed,” *The Sunday Times*, 22 January 2008, <http://www.timesonline.co.uk/tol/news/uk/education/article3228018.ece> (accessed January 1, 2011)

71. Matthew Reisz *op.cit.* note 35

72. Douglas Murray, “Radical Islam on UK Campuses: A Comprehensive List of Extremist Speakers at UK Universities”, Centre for Social Cohesion, April 2010, http://www.socialcohesion.co.uk/files/1292336866_1.pdf accessed 7/1/2011

73. *Ibid.*

74. Matthew Reisz, *op. cit.* note 35

75. *Ibid.*

take pride in being a terrorist”;⁷⁶ and the recent lecture at LSE by Abdul Bari Atwan, in response to which Israeli Ambassador Ron Prosser said: “To invite Atwan to a British university should be inconceivable. That in 2010 situations are allowed to develop where Jews are called ‘Nazis’ on British campuses should appal and concern Britons in equal measure.”⁷⁷ It is clear that guidelines, which can be ignored with impunity, are not an effective intervention against campus hate speech.

Unlike a set of guidelines, legal intervention is powerful enough to change the very culture of the campus by requiring that anti-Zionist expression be positively prohibited, on pain of imposition of sanctions and stigma. Legal intervention can also go beyond the limited range of guidelines, which tend to focus on preventing invitations to radical Islamist speakers, and address the entire range of anti-Zionist expression on campus, including the erection of “apartheid” walls, the staging of pro-Palestinian student occupations, and the twinning of British universities with institutions like the Islamic University of Gaza, which was used as a military site by Hamas during Operation Cast Lead.⁷⁸

Use of the law in the fight against anti-Semitism has been suggested before. It was discussed by the European Institute for the Study of Contemporary Antisemitism’s (EISCA) Report of 2009, *Understanding and Addressing the ‘Nazi Card’: Intervening Against Antisemitic Discourse*, where Paul Iganski and Abe Sweiry suggested that playing the Nazi card *may* constitute incitement to racial hatred under the race relations and public order legislation.⁷⁹ They also endorsed recommendations to revise Britain’s incitement to racial hatred laws to extend the reach of the criminal law to racist speech more broadly, rather than just those extreme expressions of racial hatred that threaten public order.⁸⁰

However, for the purposes of on-campus anti-Zionist expression, there is no need to use the laws against incitement, or to enact new legislation against hate speech more generally, to respond to the anti-Semitic delegitimization campaign that is taking place in the academy. This is because the UK already possesses the legislation and the common law needed to mount an effective fight-back: S. 26 Equality Act, replacing s3A Race Relations

76. “Terror Group Using UK as European Base,” *Jewish Chronicle*, 26 February 2010, 1-2; and see, <http://www.thejcc.com/news/uk-news/27149/police-investigate-azzam-tamimi-soas-talk> (accessed December 31, 2010)

77. Robyn Rosen, op. cit. note 25, p. 6

78. Ehud Rosen, op. cit. note 3

79. Paul Iganski and Abe Sweiry, “Understanding the ‘Nazi Card’: Intervening Against Antisemitic Discourse,” para. 104, p. 30 <http://www.eisca.eu/wp-content/uploads/2009/07/nazicard.pdf> (accessed January 1, 2011)

80. Ibid, paras 99 – 103, pp. 29 & 30

Act (Amendment) Regulations 2003, which came into force in October 2010, prohibits, inter alia, “unwanted conduct” from taking place in a university which can “reasonably” be perceived as creating a “hostile environment” for a “protected” individual or group. These provisions make it possible to argue that anti-Zionist expression on campus is ‘unwanted conduct’ which can ‘reasonably be perceived as creating a hostile environment’ for ‘Jewish students’ because it constitutes anti-Semitic campus hate speech. In addition, any conduct on campus which causes students harm puts the university in breach of its common law duty of care to them. This makes it possible to argue that the Jewish students’ claims of harassment and intimidation, and other harms, experienced as a result of the on-campus delegitimization campaign, are a consequence of the university’s breach of its duty of care.

The fact that Britain has laws at its disposal to fight anti-Zionist hate speech on campus provides a compelling reason to pursue legal intervention as a strategy. We are fortunate in the UK in that Jews have long been legally recognised as a “racial group” for the purposes of the anti-discrimination legislation on the grounds that we can be “defined by reference to our ethnic origins”.⁸¹ This gives us the unequivocal protection of the laws against race discrimination, including the hostile environment harassment provision in s. 26 Equality Act. It is time that we made use of the law which is at our disposal. As Pickett has pointed out, powerlessness is not an option: “logic dictates that on a realistic and philosophical level, actions can be taken.”⁸²

It can also be argued that in allowing anti-Zionist expression to continue on campus, UK university authorities are in breach of their own Equality and Diversity as well as Anti-Harassment Policies in relation to Jewish students. These policies are required by the Equality Act 2010, and were also required by its predecessor legislation, to promote equality of opportunity for minorities and to protect them from harassment and ethnic hostility. These policies are “hate speech” codes which place strict limitations on “free speech” in the university environment and make the usual “academic freedom” justification for anti-Zionist expression nonviable. Any speech which transgresses these codes amounts to “campus hate speech.”

81. *Mandla v. Dowell Lee* [1982] 3 All E R 1108; [1983] QB 1 interpreting s. 3 (1) Race Relations Act 1976

82. E-mail correspondence 28/12/2010 and YIISA/IASA paper, op. cit. note 47

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LEGAL ARGUMENT I: ANTI-ZIONISM AS HATE SPEECH

As long as Parliament has not legislated to prohibit anti-Zionist expression per se, people in the UK remain free to express as much hostility to the continued existence of Israel as a Jewish state as they wish, even where, as is usual, that expression employs anti-Semitic tropes and stratagems. The right to free speech, although never absolute, is based on the recognition that it is essential for both the realisation of individual autonomy and for the survival of a flourishing democracy.

However, different “speech laws” operate in the university setting. This is because it is recognised that if the aims of a university are harmed by particular forms of expression, then control of expression is justified. The university has the important aims of promoting racial, religious, sexual, and disability equality, of ensuring equal educational opportunity, and of protecting students from discrimination, including hostile- environment harassment. These aims are enshrined in the Equality Act 2010, as well as its predecessor legislation⁸³, and in the university’s own Equality and Diversity and Anti-Harassment Policies, which are themselves required by the law in order to promote minority interests. Accordingly, the Equality and Diversity Policy of a typical UK university sanctions any on-campus expression that compromises the ‘fair and equal treatment’ of a minority student, the ‘learning and social environment’ of a minority student, and the ‘educational opportunities’ available to a minority student.⁸⁴ The Anti-Harassment Policy of a typical UK university sanctions any on-campus expression that ‘reasonably offends’ the minority student, or that causes her to ‘reasonably perceive’ her ‘environment’ to be ‘hostile’.⁸⁵ In addition, *both* policies stress the minority student’s ‘right to be treated with dignity and respect’.⁸⁶ These policies operate as “hate-speech codes” and their practical effect is to sanction on-campus speech which reasonably causes offence to the minority student because it creates for her a hostile environment which compromises her educational opportunity.⁸⁷

83. The Sex Discrimination Act 1975, as amended; the Race Relations Act 1976, as amended; the Disability Discrimination Act 1995; the Race Relations Act (Amendment) Regulations 2003; the Equality Act 2006; the Equality Act (Sexual Orientation) Regulations 2007; and various European Council Directives.

84. See, for example, http://staff.shu.ac.uk/university_secretariat/raceequality-policy.asp (accessed January 3, 2010)

85. See, for example, http://staff.shu.ac.uk/university_secretariat/antiharassment.asp (accessed January 3, 2010)

86. *Ibid*

87. For a full discussion of the meaning of campus hate speech, see Timothy C. Shiell, *Campus Hate Speech on Trial* (Laurence: University Press of Kansas, 2009)

Anti-Zionist expression constitutes “campus hate speech” because it violates both the Equality and Diversity Policy and the Anti-Harassment Policy of the UK university with respect to Jewish students, who routinely report feelings of isolation, humiliation, distress, lowered self-esteem, low self-worth, offence, fear, intimidation, and a hostile environment following an on-campus anti-Zionist event.⁸⁸ These feelings and perceptions are *reasonable* given the prevailing use of classic and contemporary anti-Semitic tropes in current anti-Zionist iconography, and given the identity of the on-campus anti-Zionist speakers. As indicated above, speakers have recently included Hizballah representative, Ibrahim Mousawi; Kamal Helbawy of the Muslim Brotherhood; Hamas supporter Dr. Azzam Tamimi; and founding member of the Palestinian Campaign for Boycott, Divestment and Sanctions against Israel (PACBI), Omar Barghouti; and Bongani Masuku, international secretary of the Congress of South African Trade Unions (COSATU), who only days before his 2009 anti-Zionist campus tour began, was found guilty by the South African Human Rights Commission of race-hate speech against South Africa’s Jews.⁸⁹ Some Jewish students have even reported that the impact of the on-campus anti-Zionist expression has been so severe as to prevent them from attending classes for a period of time, thus jeopardizing their educational opportunities⁹⁰ and risking consequential “economic losses” as a result of lowered grades and decreased career opportunities.⁹¹ Whether physical, psychological, emotional, or economic, the harms caused to Jewish students by on-campus anti-Zionist expression are clear and tangible “hate-speech harms.”⁹² These are precisely the harms that the Equality and Diversity and the Anti-Harassment policies are designed to prevent and speech that contravenes either policy constitutes “campus hate speech.”

88. Press Statement, op. cit note 28; e-mailed December 14, 2009, from Jewish students who attended the “Israel, the Palestinians and Apartheid: The Case for Sanctions and Boycott” lecture at Leeds University on 8 December 2009; <http://www.guardian.co.uk/education/2009/jan/21/kingscollegeLondon-gaza-protest?INTCMP=SRCH> (accessed December 5, 2009); Marcus Dysch, “Campus like a War Zone,” *The Jewish Chronicle*, November 6, 2009, 12.

89. “Masuku Guilty of Hate Speech,” NEWS 24.com, December 4, 2009, <http://www.news24.com/SouthAfrica/News?Masuku-guilty-of-hate-speech-20091204> (accessed December 15, 2009)

90. E-mail op. cit note 88.

91. Richard Delgado and Jean Stefancic, *Understanding Words That Wound* (Boulder, CO: Westview, 2004)

92. Mari Matsuda, “Public Response to Racist Speech: Considering the Victim’s Story”, 87 *Michigan Law Review* 2320 (1989)

LEGAL ARGUMENT II: ANTI-ZIONISM AS HOSTILE-
ENVIRONMENT HARASSMENT

The need to prevent a hostile educational environment for Jewish students (as well as other minorities) has been recognised by Parliament in the form of s. 26 Equality Act 2010, and its predecessor legislation.⁹³ S. 26, which came into force in October 2010, limits free speech in the university setting in order to ensure a hostile-free environment so that racial and ethnic minority students can realise their full educational potential. Although there have as yet been no hostile-environment harassment claims on behalf of Jewish university students with respect to anti-Zionist expression on campus, it would appear that s. 26 Equality Act provides the legal avenue to pursue such a claim. This is because the relevant part of s. 26 provides that:

- (1) A person (A) harasses another (B) if –
 - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of –
 - (i) violating B’s dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B
- (4) In deciding whether conduct has the effect referred to in subsection (1) (b), each of the following must be taken into account –
 - (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect
- (5) The relevant protected characteristics include, inter alia, race, religion and belief.⁹⁴

The whole array of anti-Zionist expression that typically takes place on the UK university campus, from lectures by representatives of political Islam, through the erection of “apartheid walls” and the staging of “Free Gaza” Student Occupations, to the display of “Free Palestine” posters and flags, would constitute “unwanted conduct” for the purposes of this section. This is because the statutory wording is designed to cover expression *in any form* that is uninvited.

Moreover, for the purpose of s.26, the “unwanted conduct” only needs “to relate to a protected characteristic” to constitute harassment. Previously, the conduct had to be committed “*on the grounds of* the protected character-

93. S.3A Race Relations Act (Amendment) Regulations 2003

94. The other protected characteristics are ‘age’, ‘disability,’ ‘gender reassignment,’ ‘sex’, and ‘sexual orientation’, s.26 (5) Equality Act 2010.

istic of the victim.”⁹⁵ This suggested a discriminatory motive in relation to the victim’s identity, but the new law represents a significant shift away from the *reason for* the unwanted conduct to a focus on its *content* and *effect*. The result is to widen the scope of harassment law to allow, for example, offensive remarks relating to race or ethnicity to be actionable regardless of the claimant’s own race or ethnicity. Accordingly, in the case of on campus anti-Semitic anti-Zionist expression, s. 26 Equality Act would permit a hostile-environment harassment claim by non-Jewish students as well as by Jewish students. This is a welcome advance in the recognition that public expressions of anti-Semitism (or any other form of bigotry) on campus are not acceptable to anyone.

As for subsection (4), that lays down both a subjective and an objective test for ascertaining whether a “hostile environment” has been created for the victim. She must have subjectively *perceived* her environment to be hostile *and* in addition the tribunal must agree that her perception is *reasonable under the circumstances*. This requires the tribunal to consider the *context* of the unwanted conduct.

In the case of a claim by a Jewish student with respect to anti-Zionist expression on campus, the *context* inquiry would require the tribunal to consider the academic-freedom justification. This is because it would be raised by the university – as it always in support of permitting anti-Zionist expression on campus – as a defence. In addition, the explanatory notes that accompany s. 26 Equality Act indicate that where a ‘hostile-environment harassment’ claim is brought in an academic setting the tribunal is required to balance the competing considerations of the university’s “freedom of expression” and “academic freedom” against the victim’s “right not to be offended” when considering the reasonableness of her subjective perception of hostile environment.

There is, then, a highly persuasive argument to be made that a tribunal would be likely to conclude that the Jewish student’s perception of hostile-environment harassment would be a reasonable one in the case of on-campus anti-Zionist expression. The university’s “freedom of expression” and “academic-freedom” justifications cannot conceivably prevail over the victim’s “equality rights” as long as (1) there are Equality & Diversity and Anti-Harassment policies designed to protect the equality interests of minority students and to promote the principle of equal respect; (2) anti-Zionist expression on campus can be shown to be inherently anti-Semitic in terms of its systematic deployment of classic and contemporary anti-

95. Op. cit. note 93.

Semitic tropes; and (3) there is official European⁹⁶ and British⁹⁷ recognition that anti-Zionist expression, whether on campus or off campus, constitutes the “new” or contemporary anti-Semitism. Moreover the tribunal in its *context* inquiry would be required to give due weight to the ‘Coalition Government’s Response to the All-Party Inquiry into Antisemitism’ on 15th December 2010, which states that: “*There is no place for racism of any form, including anti-Semitism, in higher education. The Government expects universities to have measures in place to ensure that their students are not subject to threatening or abusive behaviour on campus. . .and institutions themselves are accountable to the courts for their actions in relation to equality and tackling harassment.*”⁹⁸ In addition, the forthcoming Universities UK guidelines, due to be published in February 2011, will add considerable weight to the Jewish student’s claim of hostile-environment harassment if, as it is hoped, they make a strong statement with respect to the issue of on campus anti-Zionist hate speech.

LEGAL ARGUMENT III: ANTI-ZIONISM AS BREACH OF DUTY OF CARE

At common law, a university owes each student a duty to take reasonable care to avoid causing him any foreseeable harm, including physical or economic loss or psychological injury or reduction in his quality of life. This means that quite apart from any legal duty imposed by the Equality Act 2010, UK universities are under a common-law duty to prohibit anti-Zionist expression on campus on the grounds that it causes reasonably foreseeable harm to Jewish students. The harm is reasonably foreseeable because anti-Zionism uses anti-Semitic tropes and stratagems.

Not only do Jewish students in the UK frequently report feelings of anger, isolation, discomfort, humiliation, depression, and fear for their physical safety as a direct result of anti-Zionist activity on campus,⁹⁹ but the harms listed in s. 26 Equality Act 2010 are tangible harms. This means that whenever there are grounds to bring a hostile-environment harassment

96. “Working Definition of Antisemitism”, European Monitoring Centre on Racism and Xenophobia (EUMC), reconstituted as the European Union Agency for Fundamental Rights (FRA) in 2007, Vienna, March 16, 2005, <http://eumc.europa.eu/eumc/material/pub/AS/AS-WorkingDefinition-draft.pdf>. (accessed July 7, 2009)

97. The London Declaration on Combating Antisemitism, February 17, 2009, <http://www.communities.gov.uk/documents/corporate/pdf/1151284.pdf> (accessed July 7, 2009)

98. <http://www.communities.gov.uk/publications/communities/antisemitismresponse> (accessed December 22, 2009)

99. Marcus Dysch, “Students Fear for Safety as Rallies Grow”, *Jewish Chronicle*, January 23, 2009, 12

claim against the university, there will also be grounds to bring a negligence claim alleging breach of duty of care.

CONCLUSION

The Reut Institute Report of 2010 puts the UK at the epicentre of the global campaign to delegitimize Israel. There is an active debate currently taking place in the UK about the best way to intervene strategically to counter the existential threat to Israel and the anti-Semitic discourse it engenders.

There is less of a debate about how to stop the delegitimization that is taking place in British universities. The 2008 Report of the Centre for Social Cohesion, *Islam on Campus: A Survey of UK Student Opinions* together with the more expansive 2010 Report for the Jerusalem Center for Public Affairs, *Mapping the Organizational Sources of the Global Delegitimization Campaign against Israel in the UK*, both paint a comprehensive and discouraging picture in which the academy is facilitating this global campaign. Guidelines designed to address the problem of campus extremism and anti-Semitic hate speech cannot possibly offer an effective counter-measure in any “fight-back” strategy. This is because guidelines may be ignored without incurring any sanction. In addition, given the Universities UK working group’s emphasis on the need to “best promote freedom of speech and academic freedom” there is no guarantee that the February 2011 guidelines will seek to prohibit anti-Zionist expression on campus in any event.

The law, on the other hand, can force compliance, when all other methods of intervention fail or disappoint. The University and College Union’s academic boycott initiative in 2007 resisted all opposition, but finally collapsed when the Union obtained legal advice to the effect that implementing the boycott would contravene Britain’s race relations legislation.¹⁰⁰ In the context of anti-Zionist expression on campus, Jewish students have recourse to the hostile-environment harassment provision of s. 26 Equality Act 2010, as well as a claim at common law for breach of duty of care. Their hostile-environment harassment claim would be supported by the argument that anti-Zionist expression constitutes campus hate-speech because it contravenes the university’s ‘equality and diversity’ and ‘anti-harassment’ policies. It would also be supported by authoritative British and European definitions that anti-Zionism is a manifestation of contemporary anti-Semitism¹⁰¹.

100. Winston Pickett, op cit. note 47

101. Op. cit. notes 96 and 97

The Board of Deputies, the Jewish Leadership Council, and the Community Security Trust in their capacity as the organised UK Jewish community need to devise a strategy for legal intervention that will ensure that UK university authorities prohibit anti-Zionist expression from taking place on campus. This is essential both to help thwart the growing global delegitimization campaign that is taking place in the UK, and to ensure that Jewish students have every opportunity to fulfil their educational potential while at university. One way they can do this is to proactively advise all university vice-chancellors that legal action under s. 26 Equality Act 2010, as well as a claim at common law for breach of duty of care, *will* be taken against the university on the next occasion that anti-Zionist expression is permitted on campus, and by supporting legal action by students where that advice is not heeded. As Melanie Phillips recently said, when the scale of the delegitimization phenomenon is nothing short of a multi-layered civilian crisis, Diaspora Jews need to stop playing defence and go on the offensive.¹⁰²

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102. Melanie Phillips, *op. cit.* note 59