



Peace, justice and equal rights in Palestine/Israel

24 August 2023

Memorandum on the Economic Activity of Public Bodies (Overseas Matters) Bill

Relevance of the Balfour Project charity

1. The Scottish-registered charity's aims are educational. We seek to shed light on Britain's role and responsibilities in Palestine before the Balfour Declaration through the British Mandate period up to 1948. We also work to encourage Britain – civil society, Parliament, and Government – to advance equal rights now for Palestinians and Israelis. This Bill would undermine established British Government policy towards Israel and the Occupied Palestinian Territories (OPT). We share below our assessment of the Bill, setting out why it should not be enacted.

Assessment

2. The Bill is based on the false premise that public bodies should be obliged to exclude moral considerations when making ethical overseas investment/procurement decisions. The word moral means ethical. All public bodies are rightly required to act ethically, including when they make such decisions. This Bill would prevent them from doing so. Separately, it runs counter to longstanding bipartisan UK policy towards the Israeli/Palestinian conflict. Lumping together Israel and the OPT, as if they were one legal entity, would seriously damage our international standing as a nation committed to upholding the rule of law while weakening our ability to play a role in resolving the conflict. UN Security Council Resolution 2334 (2016), drafted by the UK, "*calls upon all states ... to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967*". For a Permanent Member of the Council to blatantly contradict this Resolution and its predecessors would put the UK in a similar camp as Russia when it used its veto at the Security Council last year to block condemnation of Russia's invasion and occupation of Ukrainian territory. The Bill would also lend comfort to Israel's illegal settlements project in the OPT precisely when its government is accelerating their expansion – with the aim of annexing more Palestinian land to prevent a two-state outcome. The Bill should therefore be withdrawn.

Some examples of defects in this Bill

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Rt Revd Declan Lang, Very Revd Dr Andrew McLellan, Rt Revd John Pritchard, Rabbi Danny Rich,
The Rt Hon The Lord Soames of Fletching, Baroness Morris of Bolton, Jon Snow, Dr Monica Spooner, Rt Hon
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3. Clause 1 (2) creates the problem by seeking to ban public authorities from taking moral issues, including human rights, into account when making ethical decisions on overseas investment/procurement. Moral = ethical. The two words cannot be set against each other. Britain has a proud record of support for the UN Guiding Principles on Business and Human Rights since they were agreed in 2011 and was the first country to draft a national Action Plan to implement them. It is nonsense to insist that the private sector must act ethically in its overseas dealings, while the public sector is banned from taking ethical considerations into account when making similar decisions about overseas activities. This, despite the potential economic, legal, and reputational risks to those bodies of being involved in such non-ethical investment. If the UN Guiding Principles are appropriate – and we are convinced they are – the Government should withdraw this Bill and invite public bodies to respect fully those Principles.
4. Clause 2 (7) contains the only reference to any country in the Bill: the State of Israel, which is put together with the OPT and the occupied Syrian Golan Heights. For the purposes of the Bill, Israel is thus equated with the OPT and the Golan. The clear intention is that any ethical divestment/non-procurement decision by a public body concerning the illegal Israeli settlements in the OPT and the Golan will be banned. This conflation is deliberately misleading. Under customary international law, Israel is the occupying power in both territories and the sovereign power in neither. If enacted, the Bill will significantly alter UK foreign policy, diverging from the bipartisan approach adopted by successive British Governments since the 1980s. Furthermore, the Bill seeks to consolidate that conflation of Israel proper and the territories it occupies by stipulating that any change to it would require primary legislation. The Bill thus seeks to tie the hands of future governments.
5. Clause 4 of the Bill would “gag” public bodies, preventing them from even expressing a policy view on an issue of public interest – they would be penalised for explaining even why they were unable to act as they would have wished as a direct result of this new Act. This is a direct attack on our long-cherished freedom of expression. In the case of elected public bodies, it would prevent them from responding to the democratically expressed wishes of their electors and prevent local councillors from expressing sympathy with those wishes.

The Governments of Scotland, Wales and Northern Ireland

6. These Governments make their own public procurement decisions. One aim of public procurement is to encourage companies to behave correctly with regard to all fundamental human rights, including labour rights, as well as environmental concerns, notably tackling the causes of climate change. Such laudable efforts – uncontroversial in their own right – will be hampered by this Bill, which infringes the executive competence of the devolved administrations in the field of procurement.

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HM Government does not have a monopoly on morality

7. The contention in the Bill that only central government can make a sound assessment of the human rights record of a foreign country is wrong and runs counter to established practice in other mature democracies we respect and consider as peers. It is also an attack on local democracy. Local authorities and universities should be free to take into account the human rights record of any country when deciding on investment or procurement. Taking an example unrelated to Israel/Palestine, the human rights record of Saudi Arabia merits scrutiny by any public body considering investing there. This right is unquestioned. This Bill, however, would prevent that scrutiny because HM Government does not have a policy of sanctioning Saudi Arabia for its undoubted breaches of human rights. But UK national realpolitik, which helps determine whether or not such a policy should be adopted at the national level, may well not apply in the case of a UK university or other local public body. The absence of a consistent national policy and practice on the use of sanctions does not entitle public bodies to ignore the ethical dimension of their overseas commercial decisions.

Antisemitism

8. When this Bill was first mentioned in the Queen's speech its proponents contended, on the basis of scanty anecdotal evidence, that it would help deter and clamp down on antisemitism. This dubious rationale is not supported by many of those the Government claims to be trying to help. The Union of Jewish Students, for example, unanimously decided to oppose this Bill. And, as the Committee will hear on 5 September, the British Jewish NGO Yachad also opposes this Bill. Over forty Israeli NGOs have called upon our Parliament to reject this Bill. The Balfour Project charity respectfully echoes that call.

Signed,



Andrew Whitley
Chair, Balfour Project
23 August 2023

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