



SUBMISSION TO THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS

RE: "CONSULTATION—HOW TO CREATE AND MAINTAIN CIVIL SOCIETY SPACE? WHAT WORKS?"

THE LOUIS D. BRANDEIS CENTER FOR HUMAN RIGHTS UNDER LAW

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The Louis D. Brandeis Center for Human Rights Under Law (LDB) is an independent, unaffiliated, nonprofit corporation established to advance the civil and human rights of the Jewish people and promote justice for all. LDB conducts research, education, and advocacy to combat the resurgence of anti-Semitism on college and university campuses. We see the college campus as a key place where the productive, meaningful dialogue that is a hallmark of civil society occurs, and through our work we support the right of all members of the college community to participate equally in this important civil society space.

LDB's namesake, U.S. Supreme Court Justice Louis D. Brandeis, once explained, "If there is a time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."¹ We believe that broader understanding of this teaching can only strengthen civil society institutions. In general, we urge greater national and international protections of the freedom of speech, as guaranteed in the First Amendment of the U.S. Constitution and in international law including the International Covenant for Civil and Political Rights. This is one of the core principles that governs our work.² In particular, LDB strongly supports academic freedom on college campuses and works to protect this feature of civil society.³

At the same time, we believe that all states must abhor the violations of civil and human rights that occur when people face discrimination based on their religion, race, or other group identity. In fact, we have seen through our work that groups that suffer from religious, ethnic, racial, and other forms of discrimination do not have an equal opportunity to participate in civil society through expression, assembly, or association. Where there is obstructed access to spaces for civil society, the goals of civil society cannot be accomplished.

LDB endorses the view that creating space for civil society requires upholding both freedom of expression and protection of civil and human rights. Each of these freedoms must be protected without compromising the other. We believe that they are mutually reinforcing, rather than contrary ideas, and that when they are combined they can best advance the objectives of civil society. To this end, LDB has encouraged U.S. government agencies and universities to adopt the definition of anti-Semitism currently adopted by the U.S. Department of State, which is specific enough to distinguish between anti-Semitism and legitimate criticism of Israel, thus embracing both freedom of expression and freedom from discrimination.⁴

LDB has produced and collected a number of "best practices" guides which address the topics of anti-Semitism, freedom of speech, anti-discrimination, and academic freedom, among other topics.⁵ These guides provide additional detail on LDB's views regarding how freedom of expression and freedom from discrimination can be used to create and maintain space for civil society.

¹ Whitney v. California, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring).

² "Freedom of Speech," The Louis D. Brandeis Center for Human Rights Under Law, <http://brandeiscenter.com/?/practices/freedom-of-speech>.

³ "Academic Freedom," The Louis D. Brandeis Center for Human Rights Under Law, <http://brandeiscenter.com/?/practices/academic-freedom>.

⁴ Kenneth L. Marcus, The Louis D. Brandeis Center for Human Rights Under Law, "Best Practices Guide for Combating Campus Anti-Semitism and Anti-Israelism," <http://www.brandeiscenter.com/images/uploads/practices/bestpracticesguide.pdf>.

⁵ Kenneth L. Marcus, The Louis D. Brandeis Center for Human Rights Under Law, "Best Practices Guide for Combating Campus Anti-Semitism and Anti-Israelism," <http://www.brandeiscenter.com/images/uploads/practices/bestpracticesguide.pdf>; Kenneth L. Marcus, The Louis D. Brandeis Center for Human Rights Under Law, "Fact Sheet on the Elements of Anti-Semitic Discourse," http://brandeiscenter.com/images/uploads/practices/factsheet_antisemitism.pdf.