

The Divestment Deception: Legal and Political Answers to Divestment Claims

Students and professors at several American universities have joined together in campaigns that urge divestment from companies that do business with Israel. This movement singling out Israel among all nations for condemnation and punishment has surfaced at the University of California at Berkeley, Columbia, Michigan, Harvard, Massachusetts Institute of Technology, University of Massachusetts at Amherst, University of Pennsylvania, Yale, and other universities. The following legal, political, and moral arguments address the divestment movement's principal arguments.

Background

Israel is a democratic country, a steadfast ally of the United States and other democratic nations around the world. It is currently confronting a ferocious, ongoing wave of terrorist attacks that targets civilians throughout the State of Israel.

Israel has not brought this terror campaign upon itself. Rather, Israel's Prime Minister in 2000, Ehud Barak, made an historic offer to the Palestinian Authority of land and statehood in exchange for peace at Camp David II. The terror campaign is the Palestinian response to Barak's offer, driven by extremist groups who are aided and abetted by the Palestinian Authority itself.

Although its population suffers from these terrorist attacks, Israel continues to uphold fundamental principles of human rights. Furthermore, polls repeatedly show that Israelis remain prepared to support painful concessions leading to the creation of a viable and peaceful Palestinian state beside it. But Israel cannot make peace with itself. It needs a partner that will condemn terrorism clearly, and take credible action to back up its words.

The Problem with Divestment

Israel is not an apartheid state. To make that claim is to willfully lie in order to advance an anti-Israel and, intentionally or not, anti-Semitic agenda.

The hypocrisy of the divestment movement is revealed in its "selective concern." Where are the same individuals when truly egregious human rights violations take place in Liberia, the Ivory Coast, Saudi Arabia, Sudan, and Syria and a host of other countries whose records are well known, and whose violations have cost tens of thousands, sometimes hundreds of thousands of lives?

Interestingly, many divestment proponents can also be seen defending authoritarian governments whose treatment of women, gays, and minorities are unconscionable.

Divestment is not constructive criticism of Israel; it is an attack on Israel meant to weaken it. Worse still, the attempt at divestment exonerates the perpetrators of the current violence—many divestment petitions do not include a single word condemning Palestinian terrorism, in spite of the fact that it has been directed overwhelmingly at civilians, and in particular, women and children.

Columbia University president Lee Bollinger said recently that the divestment campaign's attempt to single out Israel and compare its struggle for survival to South Africa's racist policies under apartheid is "grotesque." We agree.

Countering the specific allegations behind the divestment movement

Allegation 1: Israel is an apartheid state.

Reality: Calling Israel an apartheid state is a lie. Furthermore, it is offensive those who truly suffered from apartheid in South Africa.

The description of Israel as an apartheid state is false. Apartheid is by definition a system under which a government applies different rules to different groups of its citizens. In South Africa, the government practiced apartheid in order to exclude a majority of the population from any form of power.

Nothing about that definition applies in any way to the State of Israel, a country in which all citizens – Jewish, Muslim and Christian – enjoy the same fundamental civil and political rights.

A full sixth of the total population of Israel – one million people – are Arabs. As such, they, and all other citizens of Israel, enjoy democratic rights and the protection of the rule of law. Israel also has six official religions, and is the home of the Baha'i church, which has been persecuted in Muslim countries of the Middle East. While there are issues of contention between the majority and minority cultures in Israel and cases of discrimination, as there are, regrettably, in every other democratic nation on this earth, this is light years from a system of apartheid.

The Palestinian residents of the West Bank and the Gaza Strip are not citizens of Israel and therefore the difference between their rights and those enjoyed by Israelis cannot, by definition, be considered a situation of apartheid. Indeed, it would be absurd to suggest that Israel should grant the same rights and privileges to a demonstrably hostile neighboring people as it does to its own people

In addition, comparing Palestinians in the West Bank and the Gaza Strip to blacks in South African bantustans fails to recognize another fundamental distinction: that the final status of the territories has been acknowledged internationally, including by Israel, as a matter for negotiations. As part of the Oslo Process, the Palestinians gained autonomy in most of the territories and, at the time of Camp David II in July 2000, approximately 95 percent of Palestinians were living under Palestinian Authority jurisdiction. But rather than embracing negotiations and statehood, the Palestinian leadership turned toward terror—losing an historic opportunity. In spite of this, the current status of the territories is temporary and the long-term goal – as President Bush and Prime Minister Sharon have reiterated – is to achieve the creation of a peaceful Palestinian state through negotiations.

(Note: Ironically, Israel is the only country that has ever made an effort to create a Palestinian state—in 1947, when the Jews agreed to the UN Partition Plan, which would have given Palestinians a state alongside a newly formed Israel; and in 2000 at Camp David II and Taba. What did Jordan do for the Palestinians living in the West Bank when it had control of that territory between 1948 and 1967? It neither created a state for Palestinians nor gave them citizenship in Jordan. The same is true of Egypt when it controlled the Gaza Strip during those same years. It imposed military rule on Palestinians living under its jurisdiction.

On the same note, for over 50 years Lebanon and Syria have refused to give citizenship to Palestinians currently residing within their territories. One could rightly state that Palestinians are living under apartheid systems there. Indeed, only Jordan among the 22 Arab states has offered citizenship and a new start to Palestinians. Further, after Palestinians sided with Saddam Hussein during the 1991 Gulf War, Kuwait expelled practically overnight 300,000 Palestinians living within its borders. Those who sign divestment petitions willfully ignore such examples of

egregious treatment of Palestinians, not to mention the treatment of hundreds of thousands of Jews from Arab countries forced to leave their ancestral homes by intolerant regimes.)

Israel is a vibrant democracy, all of whose diverse citizens enjoy fundamental rights. Palestinians in the West Bank and the Gaza Strip do not live in their own state today because the Palestinian leadership is not committed to peace, not because they are subjugated by Israel. When a Palestinian leadership seriously commits to the pursuit of peace, negotiations will resume toward the express goal of establishing an independent Palestinian state. Comparing this situation to apartheid in South Africa insults the millions who suffered for decades under that institutionalized system of discrimination.

Allegation 2: Israel is violating UN Resolution 242 and must withdraw immediately from the West Bank and the Gaza Strip in order to comply with international law.

Reality: Compelling Israel to withdraw from the West Bank and the Gaza Strip without a legitimate Palestinian commitment to peace would violate the principles of UN Resolution 242.

To set the historic record straight, Israel did not *seek* to conquer territory in 1967. Rather, a war for survival was forced *upon* Israel by Egypt, Syria, Jordan, Lebanon, and Iraq through an immense buildup of troops on Israel's borders, an illegal blockade of the Straits of Tiran, and a matching rhetoric of war. At the end of the 1967 *defensive* war, Israel gained the land, including the Sinai, the Gaza Strip, the West Bank, and the Golan Heights, which it was eager to exchange for peace. Instead of engaging in negotiations, however, the Arab states gathered in Sudan and issued the famous Khartoum Declaration, stating that they would accept “no peace, no recognition, and no negotiation” with Israel.

UN Resolution 242 does not require Israel to withdraw from these territories in a vacuum. The drafters of the resolution understood that Israel could not be expected to withdraw unilaterally and without a significant commitment to peace by surrounding Arab states. Resolution 242 also does not specify that Israel should withdraw to exact pre-1967 borders, but rather that Israel should ultimately withdraw to “secure and recognized borders,” without specifying what those final borders should be.

In order to meet the standards of UN Resolution 242, Israel requires partners for peace. When Egypt's President Anwar Sadat proved to be a willing partner, Israel yielded the entire Sinai to Egypt in 1979—representing 91 percent of the territories it had captured in the 1967 war, including oil fields developed by Israel. Likewise, when Jordan's King Hussein expressed willingness to make peace, he and Israeli Prime Minister Yitzhak Rabin negotiated an agreement establishing peace between their countries and collaboratively resolving tough issues, including borders and water rights.

Israel hoped that the Palestinians would be equally viable partners for peace, and consequently engaged in the Oslo process. Tragically, when that process reached its defining moment and Prime Minister Ehud Barak presented Yasir Arafat with a detailed landmark peace plan, strongly supported by President Clinton, Arafat rejected it, offered no counter proposal, walked away from the negotiating table, and launched the current round of violence against Israel to deflect attention from his refusal and to try to regain world sympathy. Thus, the current Palestinian leadership has not met the standards of UN Resolution 242 in helping to assure secure and recognized borders for Israel; instead, it has supported terrorism over peace. International law does not require Israel to concede territory in such circumstances.

Israel never sought to occupy the West Bank and the Gaza Strip; it captured them in a defensive war. And Israel is willing to give up territory in return for a firm and credible commitment to peace by the other side.

Allegation 3: Israel is a major violator of human rights in its practice of torture.

Reality: Israel has outlawed the use of torture in spite of its daily war against terrorists who operate on its territory.

Israel faces a predicament because of the real threat of terrorism that it faces daily. True to its democratic principles, the Israeli Supreme Court has outlawed the practice of torture, even in “ticking bomb” cases, i.e., in cases in which a terrorist organizer knows about a bomb that is about to go off and kill civilians, and information extracted from him could save lives.

The use of physical pressure against criminals and terrorists is, unfortunately, practiced around the world, and the UN Convention against Torture has reprimanded scores of countries in the Americas, Europe, and Asia for such violations. Israel is one of only a few countries that has confronted this issue publicly and moved, through democratic procedures, to outlaw torture and investigate violations when they occur. Why, when the practice of torture is much more horrifying in many other countries, especially in the Arab world, does the divestment movement target only Israel?

Those who care about preventing torture would do well to condemn a host of Arab countries for their practices, rather than singling out Israel, which has attempted to adhere to strict international standards in its treatment of terrorists and potential terrorists.

Allegation 4: Israel is in violation of the Fourth Geneva Convention through its policy of maintaining settlements in the West Bank and the Gaza Strip.

Reality: Israel is not violating the legal or moral precepts of the Fourth Geneva Convention by any fair measure of its legal and moral intent. Settlements will be addressed in the context of broader negotiations on Israeli-Palestinian peace, but not before the cessation of Palestinian Authority-sponsored terrorism against Israel.

Israel has undertaken to comply with the humanitarian provisions of the Fourth Geneva Convention regarding the territories. But there is no humanitarian provision that denies Jews the right to live in the West Bank and Gaza—just as one million Arabs live within Israel proper. Indeed, many Jews lived in these areas for centuries before 1948. The conflating of settlements with “forced transfer of populations,” as referred to in the Fourth Geneva Convention, is incorrect: Jews in the territories have moved there voluntarily. Further, settlements do not endanger the Palestinians as a people, which was the original concern of the Fourth Geneva Convention, written in light of Hitler’s attempts to expand “greater Germany” and subjugate surrounding peoples.

Since Palestinian terrorists deliberately use populated areas of the West Bank and Gaza as staging grounds to indoctrinate, train, and arm suicide bombers, and to smuggle weapons from Egypt, Lebanon, Syria, and Iraq, civilian populations sometimes suffer under restrictions designed to stop terrorism. On November 1, 2002, the respected Human Rights Watch organization issued a report strongly condemning Palestinian suicide bombers and the organizations that stand behind them for “crimes against humanity.”

(Note: In recent years, the High Contracting Parties to the Fourth Geneva Convention met, for the first time in history, to condemn Israel for supposed violations. The reconvening was successfully pushed by the Arab League for political, not humanitarian, reasons. The United States and Australia boycotted the meeting, and other countries intent on justice, proportionality, and the separation of humanitarian law from politics, worked together to minimize the impact of these meetings. Far greater human tragedies, including the killing in Sudan, the genocide in Rwanda, ethnic cleansing attempts in former Yugoslavia, and the Biafra War in Nigeria, were never found to violate of the Geneva Conventions. It is morally reprehensible to politicize human rights in this way.)

Palestinians, not Israelis, have egregiously violated humanitarian law by deliberately directing acts of terrorism at civilians and by hiding terrorists behind Palestinian civilians—using them as “human shields”—including children. These are the violations that desperately need to be addressed.

Allegation 5: International law mandates that Israel must allow the immediate return of Palestinian refugees, including to areas within Israel’s pre-1967 borders.

Reality: UN Resolutions 194 and 242 speak about resolving the problem of refugees in general. A settlement to the refugee problem would be part of a final peace agreement with the Palestinians, and would include Arab recognition of Israel’s right to exist in agreed-upon borders.

The problem of Palestinian refugees and Jewish refugees from Arab lands must be solved through negotiations between the Palestinian leadership and Israel. Such negotiations must take into account that if Israel were to accept all of the people who consider themselves Palestinian refugees today, it would not remain a Jewish state. (Note: Approximately 700,000 Palestinians were deemed to be refugees after the 1948 war. The number is now estimated at 4 million and includes descendents several generations removed from the actual refugees. This definition of refugees to include all descendents is highly usual. Negotiations should also consider the fate of the Jewish refugees from Arab lands [approximately 700,000], who were driven out of their ancestral homes, leaving behind everything they had without compensation or apology. This issue has never been addressed.)

Most agree that the best solution to the refugee problem, spelled out at Camp David II, would be to create two states for two peoples, to compensate the refugee populations, and to give all Palestinian refugees the right to a home in the new state.

The issue of refugees must be solved in the context of the creation of a Palestinian state, under the accepted principle of two states for two peoples. Those who care about the status of refugees should work to stop Palestinian terrorism so as to allow negotiations to restart, and they should concurrently work to improve the lives of the many Palestinian refugees now living in deplorable conditions under Arab control—whether in territories administered by the Palestinian Authority, or in Lebanon or Syria.

Allegation 6: Israel must allow international peacekeepers in immediately to put an end to the violence, something Israel’s policies have failed to do.

Reality: Peacekeeping forces are effective in situations where an armistice is already in place and outside forces are required, literally, to keep the peace. To call for peacekeeping forces between Israelis and Palestinians now, however, would be to invite disaster.

Peacekeepers have often been helpful in sustaining situations of fragile peace. Unfortunately, this is far from the case in Israel today.

Israel is in a state of low-level warfare with Palestinian terrorists, who work and hide in the midst of civilian areas, and are aided and abetted by the Palestinian government itself. Separating the parties, which peacekeeping forces might be able to do, is far from sufficient to guarantee peace. It would also have the undesirable effect of creating de facto borders that can only be determined by bilateral talks between the immediate parties themselves.

Instead, aggressive measures are necessary to halt terrorist capabilities. International peacekeeping forces would not be willing or able to carry out this type of military mission. Their presence would likely produce a false sense of calm, allowing terrorists to reorganize, rearm, and increase their attacks, or else peacekeeping troops could get caught in crossfires and further complicate the situation. Ample precedent exists for both outcomes in the history of peacekeeping forces deployed to areas that are still in conflict.

Peacekeepers are good at keeping peace, but not at stopping ongoing terrorist attacks. There may be a role for peacekeepers in the future, but there is none now.

Allegation 7: Israel’s human rights record has been singled out for criticism by the moral authority on the issue—the UN Commission on Human Rights—and should be the international community’s primary concern today.

Reality: Singling out Israel as a violator of human rights is disingenuous and makes international humanitarian law subservient to a political agenda that does not serve the aim of peace.

While Israel is not immune from committing human rights violations—violations occur in every democratic country, and Israel is faced with an extraordinary situation of daily terrorism directed at it from within its own borders—there is no need to involve outside mechanisms to enforce human rights within Israel.

Israel sympathizes with the plight of innocent Palestinian civilians who are used as shields by terrorists or who get caught in the crossfire between Israel and terrorists. But Israel’s court system, free press, and human rights organizations provide a sufficient corrective.

Unfortunately, the UN Commission on Human Rights has, in recent years, fallen prey to a dismally political agenda, much to the disservice of those who need its protection around the world. The fact that in 2002 the United States was voted off the Commission and that its chairman in the 2003 session is Libya—which itself has a human rights record among the most egregious in the entire world—underlines the Commission’s lack of credibility.

Israel has a serious human rights system in place to monitor violations.

Allegation 8: Israel violates international norms by engaging in targeted killings, which have also resulted in civilian deaths.

Reality: Israel's targeted killing of Palestinian combatants does not violate the laws of war, and may be the best response to terrorism under the circumstances. Terrorist attacks against civilians, on the other hand, are clear violations of international law; the organized implementation of suicide bombings has been labeled a war crime by Human Rights Watch.

A government's primary responsibility is to keep its citizens safe. Terrorists roam freely in Palestinian areas of the West Bank and Gaza. Palestinian Authority security forces have made no serious efforts to stop their murderous work, and, in many cases, have contributed to it. It has been proven that Yasir Arafat funneled money to terrorists and was complicit in the import of illegal, heavy weapons from Iran. In addition, he has been a driving inspiration for terrorism, using Palestinian Authority mechanisms to glorify and incite violence against Israel and Jews.

Given the lack of credible Palestinian leadership committed to fighting terrorism, Israel has concluded that its best response, when its intelligence is aware of planned terrorism, is to target the individuals masterminding attacks, the facilities, and the supplies that are to be used. This strategy has proven effective, at least in the short-term, in dramatically slowing down the rate of attacks. The United States has also targeted terrorists in this way, most recently killing an al Qaeda operative in Yemen.

Targeted killing does not violate international law and is not the same as "assassinations," to which it has occasionally been compared. In the current state of low-level warfare between Israel and the Palestinians, armed Palestinian militants must be considered combatants, not civilians. As such, they are military targets. Similarly, buildings and houses used for military purposes become legitimate targets of attack.

Israel adheres to the legal principles of distinction, by targeting only combatants and not civilians, and proportionality, by trying to limit the damage it inflicts when acting in defense of its citizens. Tragically, many Palestinian terrorists deliberately and cynically work in civilian areas, endangering the lives of uninvolved Palestinians on purpose, and seeking to garner sympathy from the outside world.

Israel has investigated instances in which allegedly unarmed Palestinians have been fired upon by individual soldiers. Such cases are rare but not unknown in the highly charged atmosphere of a conflict situation. They are tragic and deeply regrettable, but difficult to avoid entirely in light of Palestinian methods.

The Israeli army takes care, risking its own soldiers' lives, to avoid civilian casualties in its military missions, yet mistakes happen. Civilian deaths that occur as a result of targeted killing of terrorists are extremely regrettable, but the responsibility lies with the terrorists who use civilians as human shields, not with the Israeli army.

Conclusion: Correcting Divestment's Distortion of the Middle East

In the Middle East, Israel alone stands for the values that we hold dear: free and fair elections with the participation of all citizens, regardless of religion and ethnicity; an open and inquisitive press; a representative political system (including Arab members of the Israeli parliament); an independent judiciary; and a rich and varied cultural life that celebrates the diversity of the country. Israel has taken great care to ensure those rights, including developing a sophisticated system to monitor human rights violations. No other country in the Middle East comes anywhere close to Israel on any of these measures.

From its rebirth in 1948 until today, Israel has not seen a day of peace. Until it signed a peace agreement with Egypt in 1979 and with Jordan in 1994, it was subjected to constant attacks, large and small, from virtually all the countries surrounding it. Today, Lebanon serves as a base for ongoing attacks against Israeli civilians in the north—with Syria and Iran providing significant military support. In addition, Iraq proudly supports Palestinian terrorist attacks on Israeli civilians that emanate from the West Bank and Gaza.

Furthermore, Israel faces a barrage of virulent and hateful propaganda from the entire Arab world. This inflammatory rhetoric includes books by the defense minister of Syria repeating the age-old anti-Semitic blood libel, a television series on a major Egyptian network based on the infamous *Protocols of the Elders of Zion*, music videos that glorify suicide bombers on Palestinian Authority-run television, and textbooks used throughout much of the Arab world today that contain maps denying Israel's existence and content vilifying Jews and Israel. Such propaganda is intended to incite violence. And it does.

It is *this* violence and hatred that should be the source of outrage for the international community. Indeed, it is the single greatest barrier to peace in the region.

A divestment attempt against Israel, of all countries, designed to weaken the Israeli economy and punish Israel for its misfortune, is desperately misplaced. Today, when the existence of the state is severely endangered, Israel needs our support.

We encourage you to use the interactive website created to continue a discussion about these and other issues related to Israel: www.takeACTIONnow.org

For information about how the divestment movement is anti-Semitic in nature, see *Why Campus Anti-Israel Activity Flunks Bigotry 101* by American Jewish Committee expert on anti-Semitism Ken Stern, www.ajc.org. See also Alan M. Dershowitz's excellent piece, "Divest and Conquer," in the *Forward*, May 31, 2002 -- www.forward.com.

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