

IMPACT OF THE BOYCOTT, DIVESTMENT, AND SANCTIONS MOVEMENT

HEARING

BEFORE THE
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OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
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Tuesday, July 28, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:20 p.m., in Room 2154, Rayburn House Office Building, Hon. Ron DeSantis [chairman of the subcommittee] presiding.

Present: Representatives DeSantis, Hice, Russell, Hurd, and Lynch.

Mr. DESANTIS. The Subcommittee on National Security will come to order.

Without objection, the chair is authorized to declare a recess at any time.

The chair notes that he is responsible under the rules of the House and the rules of the committee to maintain order and preserve decorum in the committee room. And we will do that, and disruption of business will not be tolerated. Thank you very much.

The chair now recognizes himself for an opening statement.

BDS is the campaign for boycott, divestment, and sanctions against Israel. The BDS movement seeks to target the state of Israel for boycotts, divestments, and sanctions. The purported goal is to leverage negative treatment of Israel to procure peace in the region. However, it is clear that the ultimate goal of the BDS movement is not to simply exert pressure on Israel to alter domestic policies; they would like to isolate, delegitimize, and irrevocably cripple the Jewish state.

BDS supporter and professor at Cal State University As'ad AbuKhalil has said, "The real aim of BDS is to bring down the state of Israel. That should be stated as an unambiguous goal. There should not be any equivocation on the subject. Justice and freedom for the Palestinians are incompatible with the existence of the state of Israel."

Another supporter of BDS, writer John Spritzler, stated, "BDS' stated goals logically imply the end of Israel as a Jewish state."

The notion that BDS is simply a harmless political movement is not true. BDS is better understood as an attempt to single out the world's only Jewish state for negative treatment through economic warfare.

U.S. policy should actively oppose attempts to boycott, divest, and sanction Israel. As our most dependable ally in the Middle East, the region's only democracy, and a country that shares our

values, Israel deserves our steadfast support. We need to nip BDS in the bud.

This hearing is timely in light of recent comments by the State Department spokesman regarding anti-BDS language contained in the trade authority bill recently passed by Congress. While the bill specifically mandates that U.S. Negotiators pressure potential trading partners to reject BDS, the State Department indicated it would not enforce the language.

Congress included the anti-BDS provision because it wanted to stymie efforts emanating particularly from European countries, where anti-Semitism unfortunately is at a post-World War II high, to target Israel. Congress needs to conduct oversight of the State Department to ensure compliance with the statutory law.

Now, BDS is not a mainstream position in the United States, but it has gained traction on college campuses and in European capitals.

The goals of BDS go beyond the idea of encouraging corporations and academic institutions to boycott and divest from businesses in Judea and Samaria. Support for BDS is curious in light of the fact that many advocates for BDS have no qualms with trading with rogue regimes, such as Iran. Indeed, these advocates seek to apply a completely separate standard to the world's only Jewish state, while turning a blind eye to militant Islamic regimes that threaten both Israel and the United States.

According to a recent study by the Israeli Finance Ministry, boycotts present a significant threat to Israel's economy. Boycotts threaten inflation, layoffs, and a potential 20-percent drop in exports. If European companies and governments were to support BDS, Israeli officials maintain such action would constitute a dramatic blow to the Israeli economy.

Israeli and American businesses have been impacted by BDS through divestment by major church groups in the United States, such as the Presbyterian Church (U.S.A.) and the United Church of Christ.

The bottom line is that support for BDS undermines Israel's economy and national security. It is a direct threat to the continued vitality and success of the state of Israel.

Today, we will hear from the CEO of SodaStream, Daniel Birnbaum, an Israeli company that has been the target of BDS. The BDS campaign has specifically targeted this company, which has since moved its factory out of Judea and Samaria, resulting in the loss of thousands—the loss of jobs for many of the Palestinians and Israelis alike.

In the case of SodaStream's factory in Judea and Samaria, which is now closed, an estimated 500 Palestinian Arabs were employed there, out of a total of 1,300 employees. While SodaStream is working to secure work permits from the Israeli Government for these Palestinians and other former employees at their new factory, the future employment opportunities for many of these workers remain uncertain. These are the very people who BDS claims it intends to help.

We will also hear from Professor Eugene Kontorovich. He was a major force behind the South Carolina law prohibiting companies who want to contract with the State government from participating

in boycotts based on nationality, national origin, ethnicity, race, and other categories of discrimination. He will also discuss existing Federal law, international law, and the potential impact of BDS on the international trading system.

Mr. Mark Dubowitz, the executive director of Foundation for Defense of Democracies, will also be joining us. He has written extensively on the topic of the BDS movement.

Mr. Matthew Duss is the guest of my minority colleagues, and he is the president of the Foundation for Middle East Peace.

The bottom line is that, one, this hearing will be critical in informing Congress about the true nature of the goals and underlying motivations of the BDS movement and its impact on trade and economic growth. American policy must be designed to counteract BDS at every turn.

And, with that, I now recognize the gentleman from Massachusetts, Mr. Lynch, the ranking member, for his opening statement.

Mr. LYNCH. Thank you, Mr. Chairman. I would like to thank you for you holding this hearing to examine the boycott, divestment, and sanctions movement, also known as BDS.

And I would also like to welcome today's witnesses for helping the committee with its work.

It is the foreign policy of the United States Government to oppose boycotts against the state of Israel. Israel is our strongest regional ally, and the economic isolation of Israeli goods and services will only frustrate our efforts aimed at achieving a lasting peace in the Middle East.

The United States has consistently opposed the boycott of Israel declared by the Arab League in 1948. Most recently, Congress passed and President Obama signed an omnibus appropriations bill in December of 2014 that included language opposing the Arab League boycott as an impediment to peace in the region and called for its immediate termination.

As with the Arab League boycott, the United States Government opposes the boycott, divestment, and sanctions movement that commenced in 2005 under the organization of Palestinian civil society groups. As recently stated by State Department spokesman John Kirby, the United States has, "strongly opposed boycotts, divestments, campaigns, and sanctions targeting the state of Israel and will continue to do so."

Some Members of Congress have questioned the administration's willingness to enforce an anti-boycott provision included in the fast-track trade bill passed last month. The provision seeks to discourage foreign partners from implementing economic sanctions against the state of Israel and also makes reference to, "Israeli-controlled territories."

In response to this language, the State Department has reiterated strong U.S. opposition to boycotts against Israel, while also reaffirming similarly longstanding U.S. Policy on Israeli settlement activity. As noted by the State Department, "Every U.S. administration since 1967, Republican and Democrat, has opposed Israeli settlement activity beyond the 1967 lines. This administration is no different, and our policy remains firm and unchanged." This policy is in complete harmony with the desire for a two-state solution.

Contrary to the criticism that has been voiced by some of our colleagues, I believe that the administration has been very clear in consistently applying the longstanding policy of the United States to oppose boycotts against the state of Israel.

I would also note that the bipartisan sponsors of the anti-boycott language included in the trade bill, Senator Cardin and Senator Portman, have been equally clear in stating that they never intended their amendment to legislate on settlements or contravene U.S. policy on the settlements. Rather, the language seeks to further discourage boycotts against Israel in accordance with longstanding policy.

I am aware that the BDS movement has become effective in some degree; it has had some impact. The bipartisan Congressional Research Service notes that divestment from Israel and boycotts of Israeli products and services have occurred to a certain extent. Mr. Birnbaum will testify, I am sure, on the economic impact of boycotts against his company, SodaStream, an Israeli manufacturer that had a manufacturing facility in the West Bank.

In December of 2013, the National Council of the American Studies Association, a nationwide academic organization, voted to boycott Israeli academic institutions. In recognition of the value of academic freedom and cooperation to foster peace in the Middle East, 134 Members of Congress, including myself, Members from both parties, sent a letter to the association in strong opposition to their decision.

Mr. Chairman, I look forward to discussing these and other issues relating to the BDS movement. And I yield back the balance of my time.

Mr. DESANTIS. I thank the ranking member.

I will hold the record open for 5 legislative days for any members who would like to submit a written statement.

Mr. DESANTIS. We will now proceed to the witness testimony.

Welcome to the witnesses.

Pursuant to committee rules, all witnesses will be sworn in before they testify, so if you could please rise and raise your right hands.

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Thank you. Please be seated.

All witnesses answered in the affirmative.

In order to allow time for discussion, please limit your testimony to 5 minutes. Your entire written statement will be made part of the record.

Mr. Dubowitz, you are recognized for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF MARK DUBOWITZ

Mr. DUBOWITZ. Chairman DeSantis, Ranking Member Lynch, members of the subcommittee, on behalf of FDD and its Center on Sanctions and Illicit Finance, thank you very much for inviting me to testify today.

I want to step back and take a broader look at this. The BDS movement is a tool of political, economic, and financial warfare against Israel. Those waging this war seek to, first, isolate and delegitimize Israel and to turn it into an international pariah. From there, by threatening reputational consequences against Israeli business partners, imposing economic damages on Israel becomes an easier task.

Our research has determined that the economic and financial warfare campaign currently targeting Israel's relationship with Europe is the real goal. That relationship in trade terms is valued at about \$30 billion.

My written testimony details the international organizations, religious institutions, private businesses, sovereign wealth funds, and universities that have joined in support of BDS in recent years. Most of them are European. They should all be identified publicly as having joined the economic and financial war against Israel.

Notably, several were pressured by BDS activists and the Palestinian Authority to terminate their business ties with Israel. They have targeted major Israeli financial institutions providing services to the West Bank and East Jerusalem through local branches. They have targeted international companies building the light-rail train system in Jerusalem. They have targeted Israeli academics and international entertainers with no connection to the West Bank or East Jerusalem. This is not just about the West Bank or East Jerusalem. It is about Israel.

For those well acquainted with economic and financial warfare, this is a familiar playbook, as pressure is ratcheted up on the target country to inflict increasing pain.

What is even more striking is that these entities have gone out of their way to single out Israel, the only democracy in the Middle East, for alleged injustices, while ignoring China, Russia, Iran, Syria, Sudan for their massive violations of human rights. This smacks of discrimination.

It is also a bad omen for the United States and our other allies, against whom many people around the world have grievances. Mr. Chairman, America and its allies must prepare for an increasingly dangerous era of political, economic, and financial warfare targeting the United States and our allies. This type of warfare is America's default instrument of coercive statecraft. It is also the new normal in the international arena. As always, Israel is the canary in the coal mine.

Many of our allies are involved in territorial disputes around the world. We may agree or disagree with their positions, but our ability and will to defend them from military, missile, cyber, WMD, and terrorist threats, amongst others, must never be dependent on our policies with respect to these territorial disputes. The same should be said about defending them against economic and financial threats.

Make no mistake: After watching the U.S. Treasury Department target Iran, Russia, and Syria with sophisticated sanctions and other advanced economic strategies, America's adversaries have been developing their own economic weapons.

Having witnessed the powerful impact of having Iran removed from the SWIFT banking system, last year pro-Palestinian organi-

zations petitioned SWIFT to disconnect Israeli financial institutions. SWIFT explained that it would not take action without direction from EU regulators, who for now have refused this request. This could change.

Meanwhile, China has used economic and other coercive measures to challenge Japan, the Philippines, and our other Asian allies over the South China Sea and frequently has used economic and diplomatic pressure to challenge international recognition of Taiwan.

Russia has used political and energy warfare to threaten Eastern and Central European allies in order to try and reestablish what it considers its sphere of influence. Both China and Russia have used cyber warfare against the United States and our allies.

For now, America and its allies are vulnerable but buttressed by the fact that the U.S. dominates the global economy because of the power of the U.S. Dollar. This will not last forever. China, Russia, and others are already looking at creating a parallel financial system free from American influence.

Make no mistake: An economic war is undeniably underway, and that war is now expanding to America's allies too. As the BDS movement has made clear, Israel is among them.

Mr. Chairman, my written testimony outlines the important legislative efforts underway at the State and Federal level to protect Israel and our other allies from this economic and financial war. Congress must encourage this, but more can be done.

The United States needs to create an economic defensive shield to protect us and our allies against economic and financial coercion. Congress is well placed to lead that effort.

In my written testimony, I outline a number of recommendations, including: establishing a policy planning function at the U.S. Treasury Department; standing up an economic warfare directorate at the NSC; developing a doctrine on the use of economic warfare; and establishing an economic warfare command.

We have entered a new era, and new structures are needed to defend the U.S. and its allies from this type of warfare. I recommend that this subcommittee work with other relevant congressional committees and the administration to institute these government reforms.

In conclusion, BDS is a form of economic and financial coercion that should be viewed within a broader problem set. To counter it properly, this challenge must be addressed at a more strategic level. Failure to do so will leave the United States and our allies vulnerable to attack from economic and financial warfare.

Thank you for inviting me to testify. I look forward to your questions.

[Prepared statement of Mr. Dubowitz follows:]

[For complete submitted testimony, please see the following website: <http://oversight.house.gov/hearing/impact-of-the-boycott-divestment-and-sanctions-movement/>]

Mr. DESANTIS. Thank you.

The chair now recognizes Mr. Birnbaum for 5 minutes.

STATEMENT OF DANIEL BIRNBAUM

Mr. BIRNBAUM. Chairman DeSantis, Ranking Member Lynch, members of the subcommittee, good afternoon, and thank you for the opportunity to testify on the BDS today.

For the past 8 years, I have been the CEO of SodaStream International, a company publicly traded on the NASDAQ and headquartered in Israel. SodaStream is the world's leading manufacturer and distributor of home carbonation systems. Our products are available in 45 countries around the world and sold at 70,000 stores, including 13,500 here in the United States. The products are manufactured at 12 facilities around the world, including 1 in New Jersey. However, our largest facility is in the Mishor Adumim industrial zone of the West Bank.

I am speaking to you today because SodaStream has been a primary target of the BDS and its affiliates since my early days with the company 8 years ago. Here is the story in a nutshell.

In all the craziness of the Middle East, in the midst of all the distrust, separation, hate, and violence, there is one factory that proves that things can be different, one factory that is an island of peace, where Palestinians and Israeli Jews work side-by-side—equal wages, equal benefits, and equal opportunity. In total, this factory employs 1,300 people, of whom 400 are Israeli Jews, 400 are Israeli Arabs, and 500 are Palestinians from the West Bank. We eat together in the same dining hall, and we celebrate each other's festivals.

The wages we pay in this factory are according to Israeli law—wages which are three to four times higher than what our Palestinian workers could earn if they had a job in the PA. We provide a healthcare package for all our workers and their families that includes physician home visits, prescription drugs, overseas treatments, and even organ transplants—all that at zero copay.

More broadly speaking, this factory, which may be the largest private employer in the West Bank, could also very well be the seeds of the budding economy of the future Palestinian state.

This factory is, or should I say was, a true gem in many ways, but the BDS thought otherwise. They have been attacking this factory in various campaigns and schemes all over the world, calling for its closure and effectively calling for the termination of its 1,300 employees.

The BDS have thrown all possible war crimes at us, accusing us of ethnic cleansing, stealing land, perpetuating the so-called occupation and profiting from it, exploiting our Palestinian workers, acting against international law, representing apartheid. Such a long and horrible list of infractions make it almost futile to defend.

BDS tactics include intimidating, harassing, and threatening of our retail partners around the world. BDS activities have been vandalizing our products in stores, stickering them with hate images, throwing product on the floor, stickering, picketing, chaining themselves to the entrances to the stores, conducting violent demonstrations and flash mob events, circulating pamphlets and utilizing social media to spread vile videos on YouTube, mobilizing mainstream media—all to manipulate our retailers to drop our product.

To provide the appearance of “moral grounding and substantiation of international law,” the BDS garnered support from

churches, including churches here in the United States, from well-known NGOs, and support from European governments.

The BDS are in the business of manipulation, violence, and destruction, but, instead of using bullets and bombs, they use vicious lies and half-truths.

I would like to share with you just one example of a grotesque image broadly distributed in Europe and which is also featured at this very moment on a BDS Web site. On page 13 of my written submission, you will see this image that shows SodaStream product smeared with blood, and it reads in French, "SodaStream: A product that kills. One product bought equals one family massacred."

Are these not libelous statements that cross a line? A French court ruled in January 2014 that this conduct, specifically this image, is abusive and illegal, and the BDS was issued a cease-and-desist order and a punitive fine.

Last October, we took a business decision to relocate this facility to a much larger facility inside the 1967 international borders of Israel—a business decision. And how did the BDS respond? Well, as expected, they celebrated a big victory. They did not care that 5,000 Palestinians will lose their sustenance.

But what is really revealing is that the attacks are continuing even after we announced our departure from the West Bank. This shows the true agenda of the BDS.

To our amazement, we are now being accused of stealing land for our new factory from the adjacent Bedouin town of Rahat within Israel. This is simply preposterous. The reality is that we were invited here. In my written statement, you will see a letter by the mayor of Rahat, Talal El-Garnawi, stating that these claims are not only false but that our factory is a blessing, bringing economic prosperity to his town.

Finally, the story of the 8-year hate campaign against SodaStream really exposes the true face of the BDS. It is evident that the BDS and its affiliates use the Palestinian people as a proxy to advance their political agenda grounded in the hate of Israel. Indeed, the BDS leaders have said many times that their true agenda is not to liberate the West Bank but, rather, to end the existence of the Jewish state of Israel. We shall not let that happen.

Chairman DeSantis, Ranking Member Lynch, subcommittee members, this concludes my prepared statement. I will be happy to answer any questions you may have.

[Prepared statement of Mr. Birnbaum follows:]

[For complete submitted testimony, please see the following website: <http://oversight.house.gov/hearing/impact-of-the-boycott-divestment-and-sanctions-movement/>]

Mr. DESANTIS. I thank the gentleman.

The chair now recognizes Mr. Kontorovich for 5 minutes.

STATEMENT OF EUGENE KONTOROVICH

Mr. KONTOROVICH. Chairman DeSantis, Ranking Member Lynch, honorable members of the committee, thank you for inviting me to testify today about the continued campaign of economic warfare against Israel.

The campaign of economic warfare against Israel dates back to the birth of the Jewish state. Starting in 1948, the Arab League organized a notorious campaign to isolate Israel. Not only did they block any economic ties between themselves and Israel, they pressured companies in third countries to also boycott Israel.

In the 1970s, at the height of the Arab League's boycott campaign, the U.S. passed laws making it a crime for U.S. entities to participate in the boycott. Since then, the Arab League boycott has fallen into decline and under-enforcement. Part of this has been due to these U.S. laws and U.S. pressure in trade negotiations. Partly, it has been due to changing Arab attitudes towards Israel.

As Arab states were increasing their trade with Israel, the old boycott campaign developed a new face. At the Durban Forum in 2001, anti-Israel groups, coordinated by U.N. Agencies, adopted boycotts and sanctions as a policy tool to isolate Israel. Thus, private actors appear today at the forefront of boycott campaigns today, but the strategy is the same as the Arab League pursued: to choke off and delegitimize Israel.

Several legislative initiatives in Congress seek to update U.S. Laws to deal with the new face of the boycott movement. Part of this legislation has passed in the TPA, and another important part, contained in H.R. 1907, is currently in conference. These laws are merely mild updates of the traditional U.S. Approach to Israel boycotts. They have received across-the-board, unanimous support in Congress.

Nonetheless, some object to the anti-boycott laws because they would also apply to boycotts that also are directed at entities in, "territories under Israel jurisdiction," which means West Jerusalem, the Golan Heights, and other parts of the West Bank. Contrary to the entirely unsupported claims of these critics, this is also entirely consistent with U.S. Law and policy.

The existing anti-boycott laws also apply to boycotts of any Israeli nationals or companies, regardless of their location. No one has ever objected to this or sought to limit the application. In signing the 1977 anti-Arab-League-boycott law, President Carter observed that the issue goes to the very heart of free trade amongst nations and that boycotts were, in fact, divisive measures aimed particularly at Jews. President Carter and no one else has ever suggested that the anti-boycott laws be limited to Israeli companies in any particular location.

Moreover, the U.S.-Israel Free Trade Agreement, passed in 1985 and expanded in 1996, expressly allows Israeli products from the West Bank to receive the same status for U.S. trade purposes as any other Israeli products. As reflected in the U.S.-Israel Free Trade Agreement Implementation Act, this was immediately put into effect by President Clinton.

Indeed, there is no basis in U.S. law for disallowing Congress to apply particular laws, trade laws, or other lawful measures to the West Bank or any other territories. Nor does this contradict U.S. foreign policy. While the Executive has indeed at times opposed settlement expansion or settlement construction—that is to say, adding homes for Jews in the disputed territory—no administration has ever opposed business activity there. Indeed, the U.S. Has long

recognized that peace depends on increased prosperity and economic integration.

Moreover, boycotts do not seek to prevent settlement growth. Rather, their express goal is to choke off and eliminate all Jewish presence, even mere business activity, in the disputed areas, including ones that would surely come under Israeli sovereignty in any peace deal. This fundamentally contradicts U.S. policy, dating back to 1967, that any ultimate parameters must be negotiated.

Finally, this language, this now-controversial language, is necessary to prevent anti-boycott laws from becoming indeterminate and incoherent. For example, language referring to territories controlled by Israel is necessary simply to have such laws apply to western Jerusalem. As is well known, the position of the administration and several administrations is that western Jerusalem is not part of the state of Israel. Thus, if Congress wishes to ensure that its trade measures and laws concerning Israel apply to western Jerusalem, language like “territories under Israeli jurisdiction” is needed. And that is based on the administration’s own view in the Zivotofsky case.

Moreover, boycotts of settlements are not self-limiting, because settlements are not businesses. Business is one thing; settlements are another. What about the Tel Aviv tour operator that goes to the Old City, organizes a tour? That could fall within the boycott movement in European sanctions. On the other hand, we know that even the President of the United States has visited the Old City. This is not what people mean by “settlements.”

There is nothing internationally illegal about doing business in the territories. One does not need to be a supporter of settlements to understand this. Just last year, a prestigious French appeals court ruled that French and international law allows French companies and businesses to do business with the Israeli Government in these areas.

Finally, as I elaborate in my written testimony, the planned EU trade restrictions, which some of these measures go to, would violate multiple provisions of the General Agreement on Trade and Tariffs.

Let me conclude with some brief recommendations. Congress should quickly pass H.R. 1907 to make clear that these measures are violations of the GATT, to encourage States to continue to pass laws dealing with boycotts, and to protect United States companies from discriminatory and baseless foreign judgments based on perversions of international law.

[Prepared statement of Mr. Kontorovich follows:]

[For complete submitted testimony, please see the following website: <http://oversight.house.gov/hearing/impact-of-the-boycott-divestment-and-sanctions-movement/>]

Mr. DESANTIS. I thank the gentleman.

The chair now recognizes Mr. Duss for 5 minutes.

STATEMENT OF MATTHEW DUSS

Mr. DUSS. Chairman DeSantis, Ranking Member Lynch, members of the subcommittee, thank you very much for inviting me here to speak to you on this timely issue.

In the 10 years since it commenced, the BDS movement has slowly but steadily risen in visibility. I would like to focus today on the role that this movement has been playing recently in the United States, particularly with regard to recent congressional legislation.

In order to do that, I want to first take a moment to identify just what we are talking about when we discuss BDS.

This movement has three main demands. The first is an end to the occupation that began in 1967. The second is equal rights for Palestinian citizens within Israel. The third is protecting and promoting the rights of Palestinian refugees to return to their homes in what is today Israel.

This movement is distinct from many peace activists in Israel, Palestine, the United States, Europe, and elsewhere who support boycotts of settlement products and divestment of businesses profiting from the 48-year-old occupation of the West Bank, Gaza, and East Jerusalem as part of an effort to preserve the possibility of a two-state solution to the Israeli-Palestinian conflict.

Crucially, the BDS movement is also distinct from the recent moves by the European Union to more aggressively distinguish between Israel within the pre-1967 lines, known as the Green Line, and the occupied territories.

This is where we come to the recent trade legislation by Congress and the response from the State Department. With the stated intention of protecting Israel from BDS, the recently passed Trade Promotion Authority contained 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."

This is why I think it was important and appropriate for the State Department to offer a clarification, as it did upon passage of the trade bill, stating that the U.S. will continue to make the distinction between Israel and the occupied territories, as the United States has done since 1967.

Now, I can talk more about this in the Q&A, and my written statement contains more detailed analysis, but, to the extent that one sees BDS actions as part of an effort to delegitimize Israel—and I think that's clearly the case with regard to a number of the leaders of the movement—they should certainly be addressed but, I would advise, not through legislation. Israel has protections 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 take a moment here to 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 freedom 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 and arrest its growth would be to work to achieve those goals and act against efforts which prevent or foreclose them.

Moreover, it would be counterproductive to give BDS an unearned victory here by cooperating in any way with the conflation of Israel and the occupied Palestinian territories. We can and must support Israel in defending herself against actions that genuinely threaten her security and legitimacy. This has been a consistent American position since Israel's birth.

Another consistent American position, however, has been in opposing the creation of Israeli settlements, 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 make that distinction in U.S. Policy and law.

I thank you, gentlemen, for your time and attention and look forward to your questions.

[Prepared statement of Mr. Duss follows:]

[for complete submitted testimony, please see the following website: <http://oversight.house.gov/hearing/impact-of-the-boycott-divestment-and-sanctions-movement/>]

Mr. DESANTIS. Thank you.

The chair now recognizes himself for 5 minutes of questioning.

Mr. Dubowitz, a lot of Americans may not know what BDS is. Is there any doubt in your mind that BDS is more than just trying to boycott certain policies, that BDS is aimed really at the legitimacy of Israel itself?

Mr. DUBOWITZ. Chairman, there is no doubt in my mind. I mean, this is a familiar playbook for people who have worked in the area of sanctions. I've spent over a decade working on sanctions, and it is a very familiar playbook. As I said, it is about delegitimization at the political level. It is about establishing the country as an international pariah. And then it is about using a combination of state actions and private actions in an economic and financial warfare campaign against that country.

And I would make another point, and that is that many of our allies, actually, are involved in territorial disputes around the world. I mean, in the South China Sea right now, there are huge disputes going on between China and Vietnam and the Philippines and Japan and other countries. The United States shouldn't be taking a position on territorial disputes in the context of economic and financial warfare. We don't, for example, when supporting our allies against cyber threats, conventional military threats, terrorist threats, or missile threats.

We have a firm policy of defending our allies, when we actually fund and sell missile defense systems or cyber defense systems to Israel, we expect the Israeli Government to use those systems protecting everybody in the region, including in the West Bank and West Jerusalem and East Jerusalem. There should be no distinction with respect to economic and financial warfare.

Mr. DESANTIS. Now, Mr. Birnbaum, you know, you have this company. You are employing all these Palestinian Arabs. You get targeted by BDS, so then you move operations. But yet they still target you. And so I think that that, to me, is very revealing. And

I really appreciate your testimony, because I think that really educates the American people about what is really at the heart of this movement.

But is there any doubt in your mind that this BDS movement is targeted beyond just territorial issues but about the legitimacy of Israel itself?

Mr. BIRNBAUM. Mr. Chairman, there is no doubt in my mind at all. And if I had any doubt, it was quenched the moment we announced that we were moving away from our West Bank factory on October 29, 2014, and a day later there were celebrations and new attacks on SodaStream for supposedly occupying the land of Bedouins within the state of Israel. And you can see those attacks at this very moment on certain BDS Web sites.

And, for me, that is evidence that the BDS is not after freeing the supposed occupied West Bank, but the BDS is after the destruction of the state of Israel. They are not going to leave us alone. But we are going to continue doing what we are doing, because we are doing the right thing for our employees and for consumers around the world. They will not stop us.

Mr. DESANTIS. So, because of the movement in response to BDS, how many fewer Palestinian Arabs are now employed?

Mr. BIRNBAUM. That's a situation that we are discussing right now with the Israeli Government.

At this moment, there are about 400 Palestinians still on our payroll in both of the factories. One is in the process of being closed, the one in the West Bank. We expect that will close around October of this year. And another couple of hundred are already working in the new facility under temporary work permits. If the Israeli Government is gracious enough to grant us work permits for these Palestinians, we can continue to employ them.

And, by the way, each one of them sustain 10 people, 10 dependents, on average. So right now we are impacting about 4,000 Palestinian people.

I am hoping the Israeli Government will come through, but it is been a struggle and a debate that we've had with them for over 10 months now.

Mr. DESANTIS. So it is possible that there would be less jobs for Palestinian Arabs as a result of the—

Mr. BIRNBAUM. Absolutely. As it stands right now, Mr. Chairman, the work permits we have for the Israeli employees—I am sorry—for the Palestinian employees that are working in Israel right now are to expire at the end of this month, in just a few days.

Mr. DESANTIS. Professor Kontorovich, I think that you and Mr. Duss have a disagreement about longstanding U.S. policy, particularly this TPA provision. As he characterized it, this was a significant change. The State Department was right to, kind of, make the statements that they did. Your position, I think, is that this has been pretty consistent, that we have not discriminated about particular commerce.

So would you care to respond to Mr. Duss?

Mr. KONTOROVICH. Thank you.

So the United States position is articulated in laws and policies that the United States has adopted. I did not hear Mr. Duss cite laws to the contrary. On the other hand, the existing anti-boycott

legislation applies to companies organized under Israeli law, regardless of where they would operate.

Similarly, the U.S.-Israeli Free Trade Agreement Implementation Act gives the President the authority, which every President since Bill Clinton has exercised, to give Israeli treatment to products from areas under Israeli jurisdiction. Thus, every existing U.S. law on the subject has extended Israeli national treatment to these areas.

Mr. DESANTIS. Now, Mr. Duss, I mean, regardless of, kind of, your views of the situation, I mean, Congress passed a specific provision in the trade authority bill. I mean, is not the appropriate response for if the State Department does not want that to come to Congress and ask them to change it, to just try to say you are not going to instruct your trade negotiators when they are negotiating deals, particularly with the European countries where this is a bigger issue, to simply not abide by it?

Mr. DUSS. Thank you for the question.

I think the principle was that the State Department was insisting on continuing consistency in U.S. policy, which is one of distinction between Israel, the state of Israel, and the occupied territories—

Mr. DESANTIS. But it might not be consistent with what was actually passed by the Congress. And I think that what the Congress, I think, intended is similar to what Professor Kontorovich laid out, was that boycotting Israel, we want to target that, we want our trade negotiators to negotiate specifically with the European countries, that, you know what, you are not going to boycott Israel. And the fact that there may be a company located somewhere else, that is not been a distinction that the Congress has wanted to draw.

Let me ask all of you, but, Mr. Dubowitz, the growth of BDS in colleges and in Europe, can you give us a sense of—I think I was in law school when I first heard about it. It was, like, a really fringe thing. I mean, I know it is not mainstream in American society, but it seems to have picked up steam on college campuses and in European capitals.

Mr. DUBOWITZ. I think that's exactly right. And, obviously, the goal is—the college campaign is a goal of political delegitimization. It is to turn Israel into an international pariah. Then it makes it much easier for the BDS movement and their supporters to specifically launch an economic and financial warfare campaign against Israeli companies with a fundamental choice, you either do business with Israel or you do business with Europe but you can't choose between—you can't have both.

And so it is very much—the BDS movement at an activist level is about political delegitimization. They also, then, have now turned their sights not only on Israeli companies but international companies that are actually working in Israel. And the fundamental goal is to undermine the Israeli economy, inflict severe economic damage on Israel, and try to change their policies.

Again, from a U.S. national security point of view, there are many people in the world that have grievances against the United States. They will turn to economic and financial warfare against us and against all our allies. And I think it is incumbent upon the

U.S. Congress to help create an economic defensive shield to protect all of our allies against the use of this new weapon.

Mr. DESANTIS. Professor, do you agree that BDS has picked up steam on American college campuses over the last decade?

Mr. KONTOROVICH. It does seem to be attracting more press attention. But one needs to also differentiate between college activity and the activity in the European Union, which is actually probably the most threatening. In college, there is often lots of tumult that does not amount to much.

Mr. DESANTIS. There has been an increase of attention in the European capitals, correct?

Mr. KONTOROVICH. Yes.

I would like to offer one clarification about the State Department statement about the TPA.

Mr. DESANTIS. Sure.

Mr. KONTOROVICH. At least in the public statement—and I think it is important to note this and hold them to this—the State Department did not say that they would not enforce the provisions of the TPA. They did say they didn't like them, but they did not come out and say they would not enforce them.

There has been no Presidential signing statement. So the natural assumption, absent such a statement, would be that they would continue to enforce and apply it despite not liking it.

Mr. DESANTIS. Spend some time here; that might not be a good assumption. But I take your point.

All right, my time is up. I will now recognize the ranking member, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

I do want to revisit the idea about congressional intent, though, and I think you raise an important point. But in determining what congressional intent is in a bill, I think it is entirely appropriate to ask those legislators what they intended. And we did ask. We did ask Senator Cardin and we did ask Senator Portman what they intended by their amendment. And they intended that there be no change in the State Department policy.

So that is probably why you don't have a clarification on what State Department policy is, because they intended no change, and the administration saw no change. And the amendment passed unanimously, with no controversy whatsoever. And it was a consistent continuation of U.S. policy.

I think one thing we can agree on is the importance of reaching a sustainable, peaceful solution between the Israelis and Palestinians. The two-state solution offers a vision of two secure, coexisting democratic nations. It has been a longstanding foreign policy objective of the United States and is supported by the vast majority of Congress.

Mr. Duss, how long has the United States supported the two-state solution as a matter of official policy?

Mr. DUSS. As a matter of official policy, I believe it was President George W. Bush who first articulated specifically and explicitly that the two-state solution was the policy of the United States.

Mr. LYNCH. Now, I am not as—I know the outward manifestations of the BDS movement, but does the BDS movement generally support or oppose the two-state solution?

Mr. DUSS. The BDS movement does not make claims about outcomes. It claims to be a rights-based movement. I think, looking at the statements of a number of BDS leaders, it is clear that quite a few of them do not support the existence of Israel. They support other solutions.

This is why I think it was very important, and it is very important, as I said in my opening statement, to distinguish between those who support economic action against Israel as a whole, such as the BDS movement, and those who support targeted action against the settlements, such as people in Israel, people in the United States, people in Europe, including the EU.

This is exactly what the EU measures being discussed now focus on. This is not boycott. This is the EU just enforcing its own laws, focusing on its own economic activities with Israel. This is the EU saying to Israel, we want to do business with you, we want you to continue to be a favored trading partner; however, our own laws prevent us from engaging with these entities across the Green Line.

Mr. LYNCH. Okay.

Now, there has already been some discussion of the provision in the trade promotion authority bill, and specifically the phrase, "Israel or persons doing business in Israel or Israeli-controlled territories."

Mr. Duss, your written testimony states, "Conflating Israel and the settlements represents a clear threat to the two-state solution itself, undermining our country's ability to effectively broker a peace agreement between the Palestinians and Israelis. This is why it is important and appropriate for State Department to offer a clarification."

Can you elaborate or clarify on that?

Mr. DUSS. I think what the State Department was saying—and this is a view that we share very closely with our European allies—is that, for the U.S. And its partners to be able to broker a peace in which the disposition of these territories will be decided bilaterally between negotiations between Israelis and Palestinians, we cannot acquiesce due to the conflation of these territories in advance.

Mr. LYNCH. Okay.

Let me ask you this. Your testimony also indicates that blurring the distinction between Israel and its settlements is, "precisely what most radical elements in the BDS movement strive to achieve. And it would be hugely counterproductive to give BDS an unearned win by cooperating in any way with that conflation."

Can you elaborate on that and clarify?

Mr. DUSS. Yes. Thank you.

I think for many in the more extreme elements of BDS—and, again, this is why I think the distinction between those who focus on the settlements in the occupied territories and who recognize the legitimacy of Israel, the security, and the continued existence of Israel and whose goal is the two-state solution—you need to make a distinction between those and the BDS, who do not recognize Israel's legitimacy, and they see all of Israel and the occupied territories as illegitimate.

And I think by conflating those things, by treating all boycotts and all economic pressure as just another part of BDS, you make the BDS movement out to be much stronger and much larger than it is.

Mr. LYNCH. Okay.

I have 12 seconds left. I will yield back. Thank you.

Mr. DESANTIS. I thank the gentleman.

The chair now recognizes the vice chair of the committee, Mr. Russell, for 5 minutes.

Mr. RUSSELL. Thank you, Mr. Chairman.

Mr. Chairman, in his submitted remarks, Mr. Duss notes that arguments by the BDS should be addressed in the American tradition, with thoughtful, considered, and ethical counter-arguments.

I would like to note for the record that Mr. Duss' father has accused Israel of war crimes and claimed that modern Israelis are not descended from Biblical Jews.

I would also like to note for the record that Mr. Duss' brother is infamous for his tweet, "Why are so many Israeli politicians rapists?"

I would also like to note that Mr. Duss' work with the Center for American Progress reacted in the height of offensive anti-Semitic rhetoric when he attempted to build his views with Nazi-era posters on their ThinkProgress Web site. This drew an extremely rare rebuke of the Center for American Progress writers from the White House—a very rare thing, indeed—that these views and tactics were troubling.

In fact, this rebuke also further notes that the Simon Wiesenthal Center, the Anti-Defamation League, and the American Jewish Committee have all termed the anti-Israeli rhetoric of a Mr. Jilani and fellow Center for American Progress writers Eli Clifton, Ali Gharib, Matt Duss, and Ben Armbruster to be infected with Jew hatred and discriminatory policy positions towards Israel.

And so my question would be: Mr. Dubowitz, do you think that these types of arguments that are coming from this key witness that has been elevated to testify before Congress, are these thoughtful, considered, and ethical ways to approach the issue? Yes or no?

Mr. DUBOWITZ. So, Congressman, I think that it is absolutely critical to examine the backgrounds and the writings and the research of people who appear before your subcommittee.

Mr. RUSSELL. Thank you, sir.

And, Mr. Birnbaum, do you believe such tactics to be thoughtful, considered, and ethical counter-arguments?

Mr. BIRNBAUM. No.

And I would take it one step further, and I would like to correct for the record something that Mr. Duss said. Now, I am not an international scholar, and I am not a lawyer. But Mr. Duss said that the BDS does not have a position on the two-state solution, and they do.

I do know how to read. And I am reading some quotes from Mr. Omar Barghouti, the co-chair of the BDS. And he said, "Good riddance. The two-state solution for the Palestinian-Israeli conflict is finally dead. But someone has to issue an official death certificate

before the rotting corpse is given a proper burial and we can all move on.” And there are many other such quotes.

Mr. RUSSELL. Thank you, sir.

Mr. Kontorovich, do you believe that these are thoughtful, considered, and ethical approaches for argument?

Mr. KONTOROVICH. Well, there is a contradiction in this perspective. Mr. Duss, on the one hand, claims that we should have discussions and arguments about BDS rather than having legislation. On the other hand, he acknowledges that Israel has much-deserved protections against boycotts, in the form of the anti-Arab League boycott laws, et cetera. That demonstrates that the American tradition is not simply to discuss trade and strategic problems but to take action about them.

Mr. RUSSELL. Thank you, sir.

And so, Mr. Chairman, I am somewhat troubled that we have before us today someone elevated to come and testify before Congress that might have such a closet to be examined. And I find these types of approaches to the BDS problem to be unthoughtful, ill-considered, and of questionable tactics. And, as a result, I really don't want to hear any more that he might have to say in this hearing.

Thank you, and I yield back my time.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes the gentleman from Georgia, Mr. Hice, for 5 minutes.

Mr. HICE. Thank you, Mr. Chairman.

Mr. Dubowitz, do you believe that the BDS is going to positively or negatively impact the peace process between Israelis and Palestinians?

Mr. DUBOWITZ. Congressman, the short answer is negatively. I mean, if you are launching an economic and financial warfare campaign against Israel, it is likely to only harden positions, it is likely to only exacerbate tensions. And I think, as Mr. Birnbaum has eloquently put it, it has a significant cost, not just to Israelis but to Palestinians as well.

Mr. HICE. Okay. Well, would you go so far as to say, again, in your opinion, that BDS really is a threat to Israel as a Jewish state?

Mr. DUBOWITZ. I would certainly go that far. And I would say that BDS, again—I want to just sort of broaden the lens here. Economic and financial warfare against a close American ally is a threat to America, and it is a threat to our other allies.

You know, as I said, there are territorial disputes happening all over the world that our allies are involved in. It is one thing for the U.S. Government to have a political view on those territorial disputes. It is another thing for the U.S. Government not to support a close ally that is the target of economic and financial warfare or cyber warfare or military warfare or any other kind of warfare.

And we need to defend our allies, or this problem will come to our shores. We learnt that problem with terrorism. Terrorism was directed against Israelis. They are the canary in the coal mine, and eventually these threats come to us.

Mr. HICE. All right. You mention a couple things. Defending our allies is one thing, but you said this is a threat to America, as well. In one or two sentences, what is the threat to America?

Mr. DUBOWITZ. Well, the threat is that there are many people in the world that have grievances against the United States, and the international order is changing, with the rise of China and Russia and the attempt to establish an alternative financial order. I can talk a little bit more about what that looks like. But, clearly, these rising powers are interested in using economic coercion, financial coercion directly against the United States.

So we need to harden our defenses. In my testimony, I outline exactly how Congress and the executive branch should begin to think about this. We need to create an economic defensive shield to protect American national and economic interests.

Mr. HICE. Mr. Kontorovich, let me ask you, how much of a threat do you believe that this poses to Israel's economy as well as their overall security?

Mr. KONTOROVICH. The larger threat to Israel's economy and security comes from the planned measures, the discussed measures of the European Commission, which are being encouraged by BDS groups. In the long run, I think they pose a real threat to both Israel and the viability of a two-state solution.

Like Mr. Dubowitz, I would like to echo that this has a particularly strong impact on the United States. What the European Union is trying to do is to use trade, trade restrictions, and discriminatory trade restrictions, as a tool of foreign relations. The central pillar of the GATT and World Trade Organization Trading System, which the U.S. is the biggest proponent of, is to separate trade policy from foreign policy disputes. By allowing for discriminatory, targeted, non-most-favored-nation treatment of Israel, it would set a precedent that would have significant impacts for a major trading country like the United States.

Mr. HICE. Okay. Thank you.

Let me go back, Mr. Dubowitz, to you, then. Does Congress, in your opinion, do we have any options? Is there anything legislatively that we can or should do towards or against private organizations that are funding the BDS movement?

Mr. DUBOWITZ. Well, Congressman, I do think so.

And I want to just echo the comments of Mr. Kontorovich. And that is that the European Union, again, is attempting to use economic and financial warfare, in this case against Israel. And Mr. Kontorovich is right that the European Union may use this against other American allies.

If the Philippines has a major dispute with the Chinese in the South China Sea and the European Union decides that, given the huge EU-Sino trade and economic relationship, that they are going to side with China over the Philippines, they may actually be persuaded by the Chinese to use their economic and financial leverage against the Philippines. And we would have to defend the Philippines, as a close ally economically and financially.

And Congress can do that. We certainly—there is a huge amount of expertise in Congress on the issue of sanctions and creating not only an offensive sanctions instrument that has been the focus of

the U.S. Government and Congress for years, but creating a defensive architecture, a defensive shield.

Legislative initiatives that are occurring in Congress today at the State level in Illinois, in South Carolina, I think are an important first step. But the U.S. Government needs to be restructured and reoriented in the way that it thinks about this economic warfare doctrine. And the institutions within the U.S. Treasury Department and elsewhere—I have done a lot of research into this topic, and they are ill-prepared to defend the United States and our allies against this new threat of economic and financial coercion.

Mr. HICE. Thank you, Mr. Chairman. I yield back.

Mr. DESANTIS. Maybe Professor Kontorovich, the BDS, are they trying to boycott regimes like Iran or the Castro brothers or North Korea, as well?

Mr. KONTOROVICH. Not only are there not such measures against countries with massive human rights violations and breaches of international law, I think what is important to note is, even at the level of the European Union—forget the NGOs of the BDS movement for a second—even at the European level, the rules that they are seeking to impose against Israel they are not imposing even on other areas and situations where they believe there are settlements and a military occupation.

Take Western Sahara, for example. The European Union, like the rest of the world, recognizes that it is occupied by Morocco. The majority of the population there are settlers. On the other hand, under European law, Moroccan produce from Western Sahara is labeled “Made in Morocco” when imported into the European. When asked about this, European officials have said that’s completely consistent with European law.

Labeling products is one thing. Sovereign status of territories is another thing. Indeed, Europe has been entering into more and more treaties with Morocco, allowing them access to Western Sahara. European parliamentary documents themselves concede that Europe’s treatment of Israel is inconsistent with its treatment of other situations they view as similar, in a way which is even problematic under European notions of uniformity.

Mr. DESANTIS. Mr. Birnbaum, what about in your experience, when BDS was targeting SodaStream, did you notice them also targeting soda companies in Iran or North Korea or anything like that?

Mr. BIRNBAUM. No, never. From my perspective, it appears they are blind to any other infractions in the world—assuming we are an infraction. We are not.

But an important case would be, on the contrary, in the Nordics, the BDS caused the Nordic retailers, all of them, all of the Nordic states, to stop sourcing SodaStream product from the West Bank and sourcing it from the mother of human rights, China.

So that’s not a problem for the Nordic markets, to import product from China. And we had to terminate, at that point in time, a few hundred Palestinian workers that could have enjoyed employment had we been able to continue to source for the Nordic markets from the West Bank.

Mr. DESANTIS. So why the double standard?

Well, I guess we will let people draw their own conclusions. I mean, I think it is odd that Israel, with this one country, would have to live under a totally separate standard than any other country in the rest of the world, in the eyes of some of these people, and I wonder what motivates that.

I am done. Mr. Lynch, do you have any more questions?

Mr. LYNCH. I do.

Mr. DESANTIS. Okay. I will now yield 5 minutes to the ranking member, Mr. Lynch.

Mr. LYNCH. Thank you.

Mr. Duss, there were some very serious accusations made by the gentleman from Oklahoma earlier in the hearing. While he asked everybody else their opinion of his accusations of you, he did not give you an opportunity to address those. So what I am going to do is I am going to yield my 5 minutes to you. I also know that he made accusations about stuff that your brother said. I am not sure how you are going to handle that, but take whatever time you would like.

I think it is fairness. This is Congress. This is an open hearing, and we should hear from our witnesses. So I am going to yield you the balance of my time for you to address the accusations made against you. Proceed.

Mr. DUSS. Thank you, Ranking Member.

I don't want to waste too much time on those. I would—you know, with regard to my father and my brother, they have both dedicated their lives to doing humanitarian work around the world, and I am very proud of them. So I think there have been statements they may have said in the past that have been taken out of context.

And with my own work, as well, I stand behind everything I have ever written. And as I have said earlier here in this hearing and will continue to say, I stand for a two-state solution. The security and the continued existence of the state of Israel and the rights and self-determination of the Palestinian people—that's the focus of my work, and that's the reason I am here today.

I would like to address the point about the BDS movement and is it focusing on any other countries. I think it is quite fair to bring up other abusive regimes and are they focused. I think Iran, for one, is the focus of a major international sanctions campaign on a whole range of issues. Those sanctions related to its nuclear program, if the deal goes through, will slowly be taken off. But it would still be focused, it will still be pressured on human rights issues and terrorism issues.

But I think the key point to keep in mind here is that the BDS movement, agree or disagree with it, is driven by Palestinian civil society and a call by Palestinian civil society groups from 2005 to focus economic pressure on Israel. In that way, I think it is quite easy to understand why the Palestinians—they are not being occupied by other countries. They are being occupied, in their view, by Israel. That's why Israelis the focus of their campaign.

One other quick response to my colleague Mr. Kontorovich's comment about boycotts in law. I think it is important, again, that we keep coming back to this point about distinction. I would distinguish between civil society actions and law and, for example, the

Arab boycott. These are countries that are boycotting Israel as a state. Those are countries; these are not civil society actors.

And, again, here is the distinction with the EU. The way that the EU is defining and enforcing its own laws is with regard to making a distinction between the occupied territories and with Israel. They are happy and want to increase trade with the state of Israel, but they want to be careful to make a distinction between Israel and the occupied territories.

Thank you.

Mr. LYNCH. Thank you.

I yield back.

Mr. DESANTIS. I thank the gentleman.

And I thank the witnesses for coming here and your testimony.

I think that this trade is going to be something that Congress, we are going to need to conduct oversight over to make sure that the law is being applied. I just think it would be a complete disaster to be negotiating trade agreements with these European countries, violate this provision, allow them to do economic boycotts of Israel.

I mean, we are the one that provides the Europeans with their security, with our defense. I mean, they do not defend themselves; it is really us. And so I think it is something that we need to keep an eye on. And I think that this committee, as negotiations go forward, we are going to look to conduct the appropriate oversight.

So I thank everybody, and this hearing is adjourned.

[Whereupon, at 3:20 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

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July 28, 2015

The Honorable Ron DeSantis
 Chairman
 Oversight and Government Reform Committee
 Subcommittee on National Security
 U.S. House of Representatives
 Washington, D.C. 20515

The Honorable Stephen F. Lynch
 Ranking Member
 Oversight and Government Reform Committee
 Subcommittee on National Security
 U.S. House of Representatives
 Washington, D.C. 20515

Dear Chairman DeSantis and Ranking Member Lynch,

We write to provide the views of the Anti-Defamation League (ADL) for the Subcommittee on National Security's July 28 hearing entitled "Impact of the Boycott, Divestment, and Sanctions Movement" and ask that this statement be included as part of the official hearings record.

We would like to thank the Subcommittee for holding a hearing to assess the Boycott, Divestment, and Sanctions (BDS) Movement, which aims to isolate and demonize Israel and deny the Jewish people their right to self-determination and a homeland. The BDS campaign promotes a biased and simplistic approach to the complex Israeli-Palestinian conflict and presents this dispute over territorial and nationalist claims as the fault of only one party – Israel. It advocates for unconstructive and divisive actions directed at blaming and pressuring Israel. In fact, the BDS campaign does not support Israeli-Palestinian peace efforts, and the movement rejects a two-state solution to the conflict.

The Anti-Defamation League

The Anti-Defamation League (ADL) is a 101 year old civil rights and human relations organization whose century-old mission statement: "To stop the defamation of the Jewish people and to secure justice and fair treatment for all" endures until today. ADL advocates for a strong relationship between the United States and Israel and promotes the security and well-being of the State of Israel. ADL works to support Israel's fair and equal treatment in the community of nations and exposes where anti-Israel activity crosses the line into anti-Semitism, fostering a hostile environment for Jewish or pro-Israel activists.

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ADL has also worked to provide support and information for those encountering BDS campaigns. In September 2014, ADL launched *Words to Action: Empowering Jewish Students to Address Bias on Campus*, which is an interactive education program for college and pre-college students that is designed to empower and equip them with constructive and effective responses to combat anti-Semitism and anti-Israel bias on campus. To date, ADL has trained over 1,900 students, and workshops are taking place every week.

Further, ADL directly engages with students and administrators on college and university campuses throughout the country. ADL provides daily, hands-on assistance to students, administrators, and other campus groups on issues relating to anti-Semitism, anti-Israel activities, BDS campaigns, free speech issues and coalition building. ADL's staff train student government bodies about anti-Semitism, and educate them on how to recognize when anti-Israel activism crosses the line into demonizing Jews. ADL provides resources and training to college and university administrators on how to respond to bigotry and intergroup strife on campus, as well as how to navigate the line between protected speech and harassment and intimidation.

The BDS Movement

The BDS movement emerged after the outbreak of the second Palestinian Intifada in 2000 and the UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa in 2001. The campaign intensified following the July 2004 joint statement by The Palestinian Campaign for the Academic and Cultural Boycott of Israel (PACBI), and a July 2005 statement by Palestinian civil society organizations calling on the international community "to impose broad boycotts and implement divestment initiatives against Israel similar to those applied to South Africa in the apartheid era." Its supporters wrongly claim Israeli policies towards Palestinians in the Gaza Strip and West Bank are akin to South Africa's apartheid regime, and that the same tactics used to demand apartheid be dismantled in South Africa should be employed to ostracize, marginalize, and pressure Israel.

Proponents of BDS have also called for pressure on governments "to impose embargoes and sanctions against Israel." Campaigns have been launched demanding the "divestment" of university, municipal, church, union and other investment portfolios from companies that do business with Israel, as well as the banning of Israeli products, professionals, academics, academic institutions and artistic performances (in Israel and abroad). Student governments at 29 universities and colleges have voted on non-binding divestment resolutions against multinational companies that do business in Israel. In addition, a number of academic associations have endorsed an "academic boycott" of Israeli academic institutions.

The core element of the BDS campaign is the rejection of a two-state solution to the conflict. The BDS movement's official platform, which includes a call for the "right of return" for all Palestinian refugees and their descendants, would result in Jews being the minority and the ultimate end of Israel as a Jewish State. In calling out Zionism as the only unacceptable form of national identity and in placing inordinate attention on Israel at the expense of all other global concerns, the BDS movement invokes long-standing anti-Semitic tropes.

Impact of the BDS Campaign in the U.S.

The BDS campaign largely has failed to have more than a public relations impact, particularly in the U.S, despite some successful resolutions on college campuses and church groups. However, these campaigns are creating a negative impact on public perceptions of Israel. Increasingly, BDS campaigns have become an effective way for anti-Israel activists to attract attention to their message, particularly on college campuses where BDS initiatives draw students, faculty, campus organizations, and administrations into what generally becomes a highly politicized and publicized debate.

These campaigns isolate Jewish and non-Jewish students who are supportive of the state of Israel, often leading to prejudicial views against Jewish students based on notions of “dual loyalty.” Whether or not all the participants in these campaigns are taking part because of anti-Semitic intent, the outcome is often hostile to Jewish students nonetheless.

ADL research reveals that nineteen campuses held votes on resolutions or referenda to divest from Israel in the 2014-15 academic year. Although none of the resolutions or referenda is binding or are likely to alter university policy, support for these initiatives inevitably leads to a divisive atmosphere on campus. Moreover, social media campaigns amplify the effect of these campaigns, giving them additional lift through viral videos, hashtag campaigns and other techniques.

There was a significant increase in anti-Israel events overall on college campuses in the 2014-15 school year. ADL research and information from our twenty-eight regional offices documented that 520 explicitly anti-Israel events and programs took place nationwide on college campuses, representing a 30% increase from the previous academic year. Well over 50% of these events focused on various aspects of the BDS movement.

BDS campaigns are divisive wherever they are introduced; they needlessly agitate and divide communities. They are increasingly found on college campuses across the United States, pitting student groups against each other and, on occasion, making Jewish students a target of harassment and creating a hostile environment.

Efforts to Marginalize and Discredit BDS

The increase of anti-Israel activity on campuses has spurred increased efforts to counter it. For many, including ADL, this has meant educating students about the issues and urging university administration leadership to make clear, as former Harvard University President Lawrence Summers did in 2002, that a BDS program targeting Israel is inherently wrong and should never become policy on campus.

At the same time, there are multiple others strategies that can be employed. Some are proposing legislation that bars BDS activity by private groups. Others are encouraging resolutions that take a clear stance against BDS. Still others are encouraging “boycott” campaigns to defeat BDS through active efforts to support the state of Israel through increased trade and investment.

Legislation that bars BDS activity by private groups, whether corporations or universities, raises some concerns about regulating First Amendment-protected free speech, and could be challenged in the courts and struck down. A decision by a private body to boycott Israel, as despicable as it may be, is protected by our Constitution. We also have some concern that efforts to legislate against BDS may divert effort away from waging the battle for hearts and minds that is necessary to marginalize the odious ideas inherent in the BDS campaign.

Indeed, there is no silver bullet. It will take a wide range of efforts to counter these initiatives. All such efforts demand time, persistence, stamina and commitment.

Strategies Moving Forward

ADL is deeply appreciative of the efforts of elected officials to recognize and reject the insidious and destructive nature of the BDS campaign. While those who seek to demonize and isolate Israel and promote BDS campaigns have a First Amendment right to express their biased views, America's political leaders are also entitled to speak out against this bias and in support of free and fair trade with America's democratic ally, Israel. Legislators can work to pass resolutions promoting the investment of mutually-beneficial business, academic, and cultural ties with Israel. Further, legislators can support legislative resolutions condemning the BDS movement's attempts to de-legitimize the state of Israel, publically state their disapproval for the movement, and help to educate the public about the true goals of the movement. We urge legislators to find productive ways to promote strong U.S. Israel trade relations as well as a mutually-negotiated two-state solution to the Israeli-Palestinian conflict, which will help bring security and stability to both Israelis and Palestinians.

We appreciate the opportunity to provide our views on this issue of great concern. Please do not hesitate to contact us if we can provide additional information or if we can be of assistance to you in any way.

Sincerely,



Stacy Burdett
Director, Government and National Affairs



Michael Lieberman
Washington Counsel



**US Campaign to
End the Israeli Occupation**

A national coalition working to end all U.S. support for Israel's military occupation and apartheid policies toward Palestinians. We stand for freedom, justice, and equality.

PO Box 21539 | Washington, DC 20009 | 202-332-0994 | www.endtheoccupation.org

**Statement Submitted to the National Security Subcommittee of the
Oversight and Government Reform Committee of the
United States House of Representatives for its Hearing
Impact of the Boycott, Divestment, and Sanctions Movement
July 28, 2015, 2:00 PM, 2154 Rayburn House Office Building
from Josh Ruebner, Policy Director, US Campaign to End the Israeli Occupation**

In July 2005, more than 170 Palestinian civil society organizations came together to issue an historic [call](#) for broad-based campaigns for boycott, divestment, and sanctions (BDS) against Israel and corporations which profit from Israel's human rights abuses of the Palestinian people. Self-consciously modeled on the international movement which helped to end apartheid in South Africa, this call for BDS was issued "in the spirit of international solidarity, moral consistency and resistance to injustice and oppression" and urges "conscientious Israelis to support this Call, for the sake of justice and genuine peace." This call for BDS is not open-ended; rather, it remains in effect until Israel adheres to three fundamental national and individual human rights of Palestinians. In the words of the BDS call, these include:

1. Ending its occupation and colonization of all Arab lands and dismantling the Wall.
2. Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality.
3. Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN resolution 194.

In the ensuing decade trade unions, faith-based organizations, student governments, cultural workers and many more worldwide have embraced the BDS call and acted upon it as a way of expressing their solidarity with the Palestinian people in its quest for freedom, justice and equality and in opposition to Israel's racism, discrimination and apartheid policies toward Palestinians.

The US Campaign to End the Israeli Occupation, a national coalition of hundreds of organizations working to end all U.S. support for Israel's military occupation and apartheid policies toward Palestinians, has wholeheartedly endorsed this BDS call and works with the Palestinian BDS National Committee to further the BDS movement in the United States.

The BDS movement has achieved many significant victories in the United States in recent years. Large Protestant church denominations, such as the Presbyterian Church (USA), the United Methodist Church and the United Church of Christ, have all taken action to either boycott Israeli settlement products, divest their

institutional holdings from U.S.-based corporations which profit from Israel's military occupation of Palestinian land, and/or call on the United States to restrict or end U.S. military aid to Israel.

More than two dozen student governments, academic associations and graduate student unions have passed BDS resolutions and Hampshire College—the first college in the United States to divest from apartheid South Africa—divested its holdings in U.S.-based corporations profiting from Israeli military occupation.

Increasing numbers of U.S. cultural workers are heeding the BDS call as well. In recent years, singers, hip-hop artists and bands such as Lauryn Hill, Talib Kweli, Public Enemy's Chuck D, The Killers, Cat Power, Cassandra Wilson, Carlos Santana, The Pixies, Gil Scott-Heron and Snoop Dogg have either canceled performances in Israel or endorsed BDS. And actors, filmmakers and authors such as Dustin Hoffman, Meg Ryan, Kareem Abdul-Jabbar, and Alice Walker have similarly canceled appearances in Israel or otherwise responded to the BDS call.

Investment funds and foundations have taken action to divest from and disassociate themselves with U.S., multinational, and Israeli companies which profit from Israel's military occupation. For example, Soros Fund Management dropped its stock of SodaStream, an Israeli company headquartered in an illegal Israeli settlement in the West Bank. The Bill and Melinda Gates Foundation divested from G4S, a British for-profit prison corporation which has been implicated in Israel's mistreatment of Palestinian children. Pension fund giant TIAA-CREF has divested from several corporations—Veolia, SodaStream, and Caterpillar—which all profit from Israeli settlements and Israel's violations of Palestinian human rights.

These are a few examples of the multi-faceted victories the BDS movement has achieved in the United States. On the tenth anniversary of the BDS call this July 9, the US Campaign to End the Israeli Occupation published a more comprehensive listing of 100 BDS successes in the United States.

Undoubtedly the BDS movement will continue to flourish in the United States as more Americans become aware of Israel's oppression of the Palestinians are our culpability and complicity—through lavish military aid and nearly unqualified diplomatic support—in enabling its continuation.

As the Oversight and Government Reform Committee holds this hearing about the impact of BDS and Congress is considering several resolutions condemning the BDS movement, the US Campaign to End the Israeli Occupation would like to take this opportunity to reaffirm its conviction that Congress may not infringe upon the First Amendment-protected right of Americans to continue advocating for and organizing BDS campaigns. To do so would be blatantly unconstitutional and contradict the very premise of freedom of speech.

The US Campaign to End the Israeli Occupation will continue to advocate for and organize BDS campaigns in solidarity with the Palestinian civil society call because it is moral, it is effective, and it is challenging and undermining Israel's oppression of the Palestinian people, the removal of which is a necessary precondition for the establishment of a just and lasting peace.

Below is an article by Yousef Munayyer, Executive Director of the US Campaign to End the Israeli Occupation, which was published earlier this month in *The Nation*, entitled "5 Reasons BDS Is Actually Working."

Thank you for including this submission and the appended article in the committee report of the hearing.

<http://www.thenation.com/article/5-reasons-bds-is-actually-succeeding/>

5 Reasons BDS Is Actually Working

It's a nonviolent, rights-based movement that represents the concerns of all Palestinian stakeholders—and the reasons for its existence are increasingly urgent.

By Yousef Munayyer

July 9, 2015

Ten years ago, on July 9, 2005, groups from Palestinian civil society issued a call to boycott, divest from, and sanction Israel until it respected Palestinian human rights. What became known as the BDS movement was born. A decade later, what was thought of as a marginal movement is being described as a strategic threat to Israel, second only to a potential Iranian nuclear weapon; and it has presidential hopefuls for 2016 responding to it as well. How did we get here in just ten years? Why was BDS able to grow and succeed as a movement? There are several reasons that both explain BDS's growth and suggest it will continue to grow and advance in coming years.

It is nonviolent. BDS asks people to fight with advocacy and their wallets, not with guns. Israel, which is well-equipped to fend off armed threats, is ill-equipped to deal with this. By characterizing BDS in the same terms as it characterizes militarized threats, Israel and its leaders seem increasingly unhinged and unreasonable. As an Israeli major general said regarding Israel's handling of nonviolent protest in the West Bank, Israel "does not do Gandhi very well." Israel's failed attempts to coherently and convincingly respond to a nonviolent, rights-based movement only add to the movement's momentum. Israel may be able to convince people that militant groups like Hamas are hellbent on destroying Israel, but that is a much tougher sell when we are talking about organizers—young and old—voting to divest from corporations that profit from occupation at church conventions or protesters seeking to take SodaStream products off store shelves.

It represents the concerns of all Palestinian stakeholders. Unlike other recent Palestinian movements that have had to deemphasize certain stakeholders in the outcome of the Palestinian national question like Palestinian citizens of Israel and Palestinian refugees, the BDS movement's three pillars place the rights of all Palestinian stakeholders on equal footing. The traditional Palestinian leadership, which had accepted the Oslo process, will likely never admit to forgoing the interests of Palestinian refugees and Palestinian citizens of Israel, but the Oslo process undoubtedly compromised the interests of those two groups. BDS, which remains laser-focused on rights, does not have to worry about threats to the legitimacy of the movement emerging from dangerous and unjust compromises. Recent public opinion polling among Palestinians shows that support for boycott efforts against Israel (86 percent) is greater than the support for Fatah, Hamas, and all other political parties *combined*.

It is decentralized. The BDS movement is based on a set of principles and tactics and operates largely among global civil society. No one person runs the movement, and anyone can engage in BDS activity. A community in North Carolina, Egypt, Malaysia, or Scotland can independently and spontaneously start a BDS initiative to address their own community's complicity in Israel's abuses of Palestinian rights. The decentralized nature of the movement makes it far more difficult to anticipate and to repress.

It gives concerned people a plan of action. People around the world who are concerned about the rights of Palestinians have often wanted to do something to change the situation, but found few ways to do that. BDS offers an answer. In the United States in the past, countless legislative advocacy efforts have been made on Capitol Hill, which is as occupied by Israeli interests as a hilltop in the West Bank. People grew tired of banging their heads against the wall that is Congress. Grassroots fervor never dissipated, however, and instead took off in the direction of BDS organizing. But interestingly enough, these BDS efforts have contributed to a shift in US public opinion, particularly among progressives, which is laying the foundation for reengaging Congress in the future.

Its reason for being still exists and is getting more urgent. This is perhaps the most important driver behind the BDS movement's growth and success. BDS exists as a response to Israel's abuses of Palestinian rights, and with an occupation as entrenched today as ever before now nearing its 50th year and a right-wing government insisting on continuing it, more and more people are realizing that BDS is the only worthwhile place to invest their energy and activism. When the "peace process" was dominating action, even as it became a parody of itself over the years, many argued that the process should be allowed to play out. But now even this is gone, and all that remains is de facto apartheid, necessitating pressure on Israel to bring it down. Of course, this means Israel truly has in its grasp the single most important weapon it can use to bring an end to the BDS movement—it can take away the movement's *raison d'être* by choosing to end its abuses of Palestinian rights. But this would require bold, honest, and visionary Israeli leadership, something very different from what exists today.

For all these reasons, the BDS movement has grown by leaps and bounds over the past ten years and is set to continue on this pattern in its second decade.

Rep. DeSantis, Chairman; Rep. Russell, Vice Chair; Rep. Lynch, Ranking Member; and other members of the Subcommittee for National Security of the House Committee on Oversight and Government Reform:

Distinguished Representatives,

During the House Oversight and Government Reform Committee's National Security Subcommittee hearing on Tuesday, July 28, in which I was invited to testify by Ranking Member Lynch, Subcommittee member Russell unfortunately used his allotted time to level a number of accusations against me and members of my family. Rather than responding to them in the hearing, I chose to address points of substance upon which I was invited to testify. I would, however, like to respond now for the record.

- Congressman Russell stated: "Mr. Duss's father has accused Israel of war crimes and claimed that modern Israelis are not descended from biblical Jews."

My father, Serge Duss, has never accused Israel of war crimes. Neither has he claimed that modern Israelis are not descended from biblical Jews. What he has said is that it is a mistake to conflate, in the frame of a modern political dispute, the biblical Kingdom of Israel with the modern State of Israel, or to see modern-day Israelis as an extension of the ancient Israelites. This discussion point was made in the context of a policy argument that modern political disputes – between Jews and Palestinians or any other peoples -- should be addressed as such, and not based on religious claims to land.

- Congressman Russell stated: "Mr. Duss's brother is infamous for his tweet, and I quote, 'why are so many Israeli politicians rapists?'"

My brother, Brian Duss, tweeted this remark in January 2011 after two Israeli politicians – former Israeli president Moshe Katsav and Hadera Mayor Shmuel Levy – had been arrested and indicted for rape. He is not the first person to have made a stupid joke on Twitter and he won't be the last. At the time, Brian was living in Jerusalem and working for a humanitarian NGO. Furthermore, while I am deeply proud of the work of my father and brother, both of whom have dedicated their careers to humanitarian aid, my work should be judged on its own merits.

- Congressman Russell stated: "Mr. Duss's work at the Center for American Progress reacted in the height of offensive anti-Semitic rhetoric when he attempted to build his views with Nazi-era posters on their Think Progress website."

The Think Progress post to which Mr. Russell referred was written in response to an offensive caricature of Middle East Peace Envoy Martin Indyk by the right-wing Israeli group Im Tirzu. I included the Nazi-era posters to show how they resembled the Im Tirzu caricature. It is quite obvious that I intended to use the images to decry in the most ardent terms, not promote, anti-Semitism.

- Congressman Russell stated: "The Simon Wiesenthal Center, the Anti-Defamation League, and the American Jewish Committee have all termed the anti-Israeli rhetoric of a Mr. Jilani, and fellow Center for American Progress writers Eli Clifton, Ali Gharib, Matt Duss, and Ben Armbruster to be infected with Jew hatred and discriminatory policy positions toward Israel."

These are the words of a journalist critical of CAP's work, not of the Simon Wiesenthal Center, the Anti-Defamation League, or the American Jewish Committee.

In closing, it is deeply regrettable that I should even have to refute these claims. I was invited by the committee to give my expert testimony on an issue of growing importance to U.S. interests. My work on these issues speaks for itself and any fair reading of the many articles and papers I've written over the past years completely refutes the careless and offensive caricature that Congressman Russell presented.

I thank you for this opportunity to correct the record.

Matthew Duss

President, Foundation for Middle East Peace

Washington, D.C