

# national lawyers guild

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To: Attorney General Lori Swanson

CC: Governor Mark Dayton, State Auditor Rebecca Otto, Secretary of State Mark Ritchie

On behalf of the National Lawyers Guild, we write in support of the lawsuit filed on November 29, 2011, against the Minnesota State Board of Investment (SBI) which seeks a judgment directing the SBI to divest from Israel Bonds.

The complaint against the SBI makes pointed reference to Article 49 of the Fourth Geneva Convention, to which both the United States and Israel are parties. Article 49 specifically prohibits an occupying power from transferring (settling) parts of its own civilian population into territory it occupies. Article 49's anti-colonization provisions are *jus cogens*, which means that they are mandatory norms of international law. *Jus cogens* violations are not political questions.

As the complaint abundantly shows, **there is no credible dispute** that Israel has been in continuous violation of Article 49 since shortly after the 1967 war by engaging in ever-accelerating settlement building activities in the Occupied Palestinian Territories, including East Jerusalem. In the last ten years, the United States has reduced its loan guarantees to Israel by nearly one billion dollars in response to Israel's illegal settlement activities. The International Court of Justice has issued an advisory opinion confirming the illegality of Israel's settlement activities and the UN Security Council has issued a number of resolutions condemning Israel for these activities.

It is well known that money obtained from the sale of sovereign Israel Bonds is used by Israel to fund its continued violations of Article 49 in the Occupied Palestinian Territories. On its Israel Bond website, the Government of Israel goes so far as to even promote its settlement infrastructure projects along with its official slogan that Israel Bonds are a "Bond with Israel".

Despite having been repeatedly informed that money generated from the sale of Israel Bonds is used by Israel to violate the Fourth Geneva Convention, the stridency by which the SBI clings to its Israel Bond investments demonstrates that they are at least "purposive". This means that the Board is aiding and abetting Israel's violations of international law. Such aiding and abetting is itself a violation of international law.

The SBI's violation of international law also violates Minnesota law. The Fourth Geneva Convention is part of the supreme law of the land and must be regarded as part of the law of each individual state to the same degree as the state's own statutes. Additionally, the Minnesota statutes impose an express fiduciary duty on each Board member to invest "in a manner consistent with law." By aiding and abetting Israel's violations, the Board members are investing state pension funds in a manner not consistent with law and violating their fiduciary obligations to the citizens of Minnesota.

By investing in Israel Bonds to "Bond with Israel", the SBI has made an international law issue a Minnesota law issue. Under Minnesota law, the SBI's investments in Israel Bonds are illegal and Minnesota should immediately divest.

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