The United Nations’ Campaign Against Business in Israel Makes No Sense

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<https://www.washingtonpost.com/opinions/the-united-nations-campaign-against-business-in-israel-makes-no-sense/2017/05/02/1760b634-2094-11e7-be2a-3a1fb24d4671_story.html?utm_term=.58165a1ccd2e>

There is increasing political tumult over the treatment of Israel at the United Nations. Last week, [all 100 U.S. senators](https://www.washingtonpost.com/world/national-security/all-100-senators-sign-letter-asking-for-equal-treatment-of-israel-at-the-un/2017/04/27/79f961fe-2b95-11e7-b605-33413c691853_story.html?utm_term=.8d0b7a3be605) — Republicans and Democrats alike — admonished the organization for anti-Israel bias, and Sen. Marco Rubio (R-Fla.) recently sponsored a bill to withhold U.N. funding because of [“anti-Israel, or anti-Semitic rhetoric or propaganda.”](https://www.congress.gov/bill/115th-congress/senate-bill/169/text?q=%7B%22search%22%3A%5B%22%5C%22Human+Rights+Council%5C%22%22%5D%7D&r=2)

Add to that an important [related bill](https://www.congress.gov/bill/115th-congress/senate-bill/720/text?q=%7B%22search%22%3A%5B%22%5C%22Human+Rights+Council%5C%22%22%5D%7D&r=7) now percolating through Congress that takes aim at a widely unknown initiative at the U.N. Human Rights Council: an effort to create a database designed to shame companies simply for doing business in the West Bank.

The blacklist effort targeted by the bill — known as the Israel Anti-Boycott Act — is procedurally flawed and substantively misguided and violates core principles of international trade.

Procedurally, companies would be added to the U.N. database [without any form of due process](http://www.ngo-monitor.org/nm/wp-content/uploads/2017/01/Submission-to-HRC-on-Blacklist.pdf) . Listing criteria do not exist. Businesses would not be able to contest their inclusion before it was made public, and once designated, they would not have access to review or delisting mechanisms.

Substantively, the list abuses well-established principles that encourage multinationals to instill ethical norms into their worldwide business conduct. This is because companies would be branded wrongdoers simply based on their presence in a politically contentious region, without consideration of their conduct with regard to human rights, the environment and social governance.

And finally, the Human Rights Council list likely violates international law. The World Trade Organization protects politics-free global economic development by limiting the ways in which governments regulate trade. U.N. efforts to publicly censure companies unless they conduct business on prescribed political lines would generally constitute unlawful trade discrimination.

Why should a company invest in a region if it will be prejudged by the United Nations based not on its impact on the ground or its positive commercial influence, but on its association alone with governments and territories embroiled in conflict? And while the U.N. database ostensibly seeks to target only those companies operating in the West Bank, the reality is that any meaningful business in Israel entails business in disputed territories.

When a foreign company is engaged in contracts with the Israeli government or sells retail products anywhere in the country, that company will necessarily have business regularly affecting the West Bank. Boycott, divestment and sanctions organizations already [target hundreds of companies worldwide](https://whoprofits.org/s?text=&title=&vid_4=All&d55_name=a1bc42b16a&09c_name=6c542ac6&timegate=1492104171&vid_2=All&vid_5=161&vid_7=All&vid_3=All&field_rev_hid_value%5Bmin%5D=All&field_rev_hid_value%5Bmax%5D=All&traded=All&revenues=&d55_name=a1bc42b16a&09c_name=6c542ac6&timegate=1492104171), regardless of how tangential their West Bank activities are.

The same holds true for multinationals with business in other conflict regions. Foreign sales in Turkey, Morocco, Russia or China would be impossible if — due to ethics programs — companies prohibited their products from being used in disputed territories in [Northern Cyprus](https://www.nytimes.com/2016/11/08/world/europe/cyprus-reunification-talks.html), [Western Sahara](http://www.newsweek.com/western-sahara-morocco-algeria-polisario-front-435170), Crimea, Taiwan or on islands in the South China Sea.

The French Court of Appeals in Versailles [has held](http://www.france-palestine.org/IMG/pdf/decision_de_la_cour_d_appel.pdf) that business in disputed or occupied territory is often essential to ensure the well-being of the local population. In 2015, [a British tribunal](https://www.gov.uk/government/publications/uk-ncp-final-statement-complaint-by-lawyers-for-palestinian-human-rights-against-g4s) — applying business and human rights guidelines from the Organization for Economic Cooperation and Development — determined that even if a company’s relationships with foreign governments technically run afoul of ethical norms, the company should not end its government contacts but rather work toward leveraging its commercial influence to bring about positive change.

These principles come from a clear interest in having ethically minded companies actively engaged in politically contentious regions. Such companies are preferable to the less ethically inclined competitors that would otherwise fill the commercial void and operate solely to maximize profits.

As for the issue of legality, several of the U.N. members that voted to create and fund the list are members of the World Trade Organization. Individually, these states have violated their duties under international trade law by taking this step. Collectively, they have caused an unfortunate clash of U.N. and WTO trade principles.

Governments should work with their U.N. ambassadors and with Secretary-General António Guterres to ensure that this list is never published. Meanwhile, multinationals must mobilize in opposition, leveraging their considerable economic ties to prevent the United Nations from erecting harmful hurdles to international business.

This dual track of government and company pressure — coupled with mounting rebuke of the Human Rights Council from Congress — might shift U.N. policy and avert a misguided shaming campaign. In turn, companies would regain the incentive to invest in ethical brands of business.