

JLens Whitepaper

Why Advocacy-Driven Legal Claims Do Not Govern Pension Investment Decisions

*Assessing Fiduciary Claims Regarding Israel Bonds Under
New York Law*

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EXECUTIVE SUMMARY

Democracy for the Arab World Now (DAWN) has circulated a memorandum¹ asserting that investments in Israel Bonds present fiduciary risk under U.S. and international law. This analysis reviews those claims under governing U.S. and New York fiduciary standards and conventional investment risk analysis. In this whitepaper, JLens focuses on New York State and City public pension investments as an illustrative example of how U.S. public pension fiduciary law operates in practice.

While JLens opposes the Boycott, Divestment and Sanctions (BDS)² movement as a fundamentally misguided and harmful campaign that seeks to delegitimize Israel, the purpose of this whitepaper is not to debate the political or moral arguments surrounding BDS. Rather, this analysis examines whether the fiduciary and legal claims advanced by DAWN—many of which align with BDS objectives—are grounded in governing U.S. and New York law, established fiduciary standards, and conventional investment risk analysis that public pension trustees are required to apply when making investment decisions. Nothing in this analysis suggests that fiduciaries are unable to consider broader policy or ethical objectives when making investment decisions; the question is whether those considerations are assessed within established fiduciary standards and a sound risk and return framework.

DAWN's memorandum fails as a fiduciary analysis for three independent reasons: (1) it does not apply standard investment or sovereign credit-risk analysis used by pension funds; (2) it misapplies international law in a manner inconsistent with New York fiduciary standards and public policy; and (3) it advances a framework that, if adopted, could create an unworkable slippery slope toward expanding divestment far beyond Israel.

SECTION I - FIDUCIARY STANDARDS UNDER NEW YORK LAW

Before evaluating DAWN's claims, this analysis first establishes the governing legal framework. Under New York law, public pension trustees' fiduciary obligations come from several sources. First, Article V, Section 7 of the New York State Constitution protects public pension benefits as contractual rights.³ Over the years, the New York courts established that the common law fiduciary duty standard applies to trustees⁴. These fiduciary principles are reflected in regulations governing the State Comptroller⁵ and, separately, in the statutory and governance frameworks applicable to independent systems such as the New York State Teachers' Retirement System and the five New York City pension funds, which are administered by their

¹ Democracy for the Arab World Now (DAWN), *Memorandum: Israel Bonds — Legal, Ethical, and Financial Risks of Investments in Israel Bonds* (Jan. 2026), <https://dawnmena.org/wp-content/uploads/2026/01/Memorandum-final.pdf>

² Anti-Defamation League, Boycott, Divestment and Sanctions Campaign (BDS) (backgrounder), <https://www.adl.org/resources/backgrounder/boycott-divestment-and-sanctions-campaign-bds>.

³ N.Y. Const. art. V, § 7 ("membership in any pension or retirement system of the state or of a civil division thereof shall be a contractual relationship, the benefits of which shall not be diminished or impaired.");

⁴ *Matter of Heller*, 6 N.Y.3d 649, 655 (2006); *McDermott v. Regan*, 82 N.Y.2d 354 (1993) ("Where the State maintains such authority in regard to the actual trustee of the funds, and specifically prescribes procedures for contributing to the benefits, concomitant with that authority is the State's duty to act in a manner consistent with the goal of the "protection" of these funds as required by article V, § 7 of New York's Constitution. The State must show, like any other trustee or fiduciary, that it has not breached that duty").

⁵ See N.Y. Comp. Codes R. & Regs. Tit. 11 § 136-2.3

respective boards of trustees subject to New York fiduciary law⁶.

Public pension funds exist to safeguard the retirement security of beneficiaries. Evaluating material risks to investment outcomes is a core fiduciary obligation—a principle reflected across fiduciary regimes, including analogous federal guidance under ERISA for private retirement plans⁷. For fiduciary purposes, material risks are those that are reasonably expected to affect how an investment performs, portfolio objectives, or the ability to meet beneficiary obligations. These obligations center on prudence, loyalty, and disciplined process. When political advocacy is repackaged as the only risk analysis without being grounded in governing law, established precedent, or financially material evidence, it fails to satisfy fiduciary standards.

Responsible fiduciary analysis requires evidence-based judgment grounded in materiality, jurisdiction, and established legal standards. When institutions assess sovereign credit risk, they apply transparent methodologies focused on repayment capacity, fiscal strength, economic resilience, liquidity, and geopolitical exposure⁸. DAWN's memorandum does not meet these standards.

Israel Bonds is the commonly used name for the Development Corporation for Israel (DCI), the U.S.-based underwriter of debt securities issued by the State of Israel. Headquartered in New York City, DCI is a registered broker-dealer with the U.S. Securities and Exchange Commission and a member of the Financial Industry Regulatory Authority (FINRA)⁹.

According to DCI, the State of Israel has maintained an uninterrupted record of meeting its sovereign debt obligations for more than seven decades¹⁰. The current credit picture is consistent with that record. In November 2025, S&P Global Ratings affirmed Israel's sovereign credit ratings and revised the outlook to Stable from Negative following its assessment of Israel's fiscal position, economic resilience, and continued market access¹¹. In January 2026, Moody's Ratings similarly revised Israel's outlook to Stable from Negative. Moody's explained that the outlook change reflected its view that Israel's "exposure to geopolitical risk has materially eased from very high levels," thereby reducing the risk of further credit deterioration, and that the "Israeli economy and public finances have over the past two years demonstrated their resilience."¹²

⁶ 11 NYCRR §136-1.6(a) (promulgated pursuant to N.Y. Ins. Law §314(b), applicable to actuarially funded public retirement systems of the state or any municipality thereof).

⁷ U.S. Department of Labor, Employee Benefits Security Administration, Meeting Your Fiduciary Responsibilities, <https://www.dol.gov/general/topic/retirement/fiduciaryresp>; DOL Field Assistance Bulletin 2018-01 (April 23, 2018) ("The primary responsibility of fiduciaries is to run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses. Fiduciaries must act prudently and must diversify the plan's investments in order to minimize the risk of large losses").

⁸ Moody's Ratings, Sovereign Rating Methodology (describing factors used in assessing sovereign credit risk, including fiscal strength, economic resilience, liquidity, and geopolitical exposure) <https://www.moody.com/web/en/us/solutions/ratings/sovereign-methodology.html>

⁹ FINRA BrokerCheck, Development Corporation for Israel (DCI) Firm Summary (broker-dealer registration and FINRA/SEC status), <https://brokercheck.finra.org/firm/summary/11148>

¹⁰ Development Corporation for Israel, Invest in Israel (stating that "Israel has never defaulted on its debt in over 70 years"), <https://www.israelbonds.com/Investing/InvestinIsrael.aspx>

¹¹ S&P Global Ratings, Israel Outlook Revised to Stable from Negative (sovereign credit rating affirmation and outlook change), <https://www.spglobal.com/ratings/en/regulatory/article/-/view/sourceId/101656119>

¹² Moody's Ratings changes Israel's outlook to Stable from Negative (Jan. 30, 2026) (as reported in Times of Israel, Moody's boosts Israel's credit outlook to stable as ceasefires in Gaza, Lebanon hold, Feb. 1, 2026), <https://www.timesofisrael.com/moodys-boosts-israels-credit-outlook-to-stable-as-ceasefires-in-gaza-lebanon-hold/>

SECTION II — CONTEXT: DAWN'S BROADER ADVOCACY STRATEGY

This section provides context for DAWN's approach and explains how its broader advocacy efforts inform the claims analyzed in Section III.

Even before the Hamas attack on Israel on October 7, 2023, and the subsequent Gaza war, DAWN advanced expansive theories of international criminal liability, including public calls for International Criminal Court investigations of Israeli officials¹³.

Following October 7, 2023, DAWN extended similar arguments beyond Israeli state actors to senior U.S. officials—including President Joe Biden, Secretary of State Antony Blinken, and Secretary of Defense Lloyd Austin¹⁴ (notwithstanding the United States' non-party status at the International Criminal Court¹⁵). DAWN also publicly asserted that President Donald Trump's executive order¹⁶ authorizing sanctions against officials associated with the International Criminal Court could subject him to "individual criminal liability for obstruction of justice." DAWN further stated that if President Trump were to implement a proposed plan involving the forcible displacement of Palestinians from Gaza, such actions would subject him to "individual liability for war crimes and the crime of aggression," and would merit an International Criminal Court investigation, including for aiding and abetting Israeli crimes and forcible transfer as a crime against humanity.¹⁷

Taken together, these statements illustrate a consistent advocacy approach: invoking what are at best speculative theories of international criminal liability and individual culpability as instruments of pressure, even though no binding domestic legal authority or fiduciary standard compels such conclusions.

To date, none of these efforts have resulted in prosecutions, findings, or enforceable legal determinations under U.S. law or governing fiduciary standards. DAWN's public-facing

¹³ Democracy for the Arab World Now (DAWN), International Criminal Court: Investigate Senior Israeli Army Lawyer for War Crimes, Crimes Against Humanity (Oct. 2022),

<https://dawnmena.org/international-criminal-court-investigate-senior-israeli-army-lawyer-for-war-crimes-crimes-against-humanity/>

¹⁴ Democracy for the Arab World Now (DAWN), International Criminal Court: Investigate Biden, Blinken, and Austin for Aiding and Abetting Israeli Crimes in Gaza (Feb. 2025),

<https://dawnmena.org/international-criminal-court-investigate-biden-blinken-and-austin-for-aiding-and-abetting-israeli-crimes-in-gaza/>

¹⁵ The United States is not a party to the Rome Statute establishing the International Criminal Court and does not recognize ICC jurisdiction over U.S. nationals. American Service-Members' Protection Act, Pub. L. No. 107-206, 116 Stat. 820 (2002),

<https://www.govinfo.gov/content/pkg/COMPS-3074/pdf/COMPS-3074.pdf>; see also U.S. Dep't of State, *Sanctioning ICC Judges Directly Engaged in the Illegitimate Targeting of Israel* (Dec. 18, 2025) ("...the United States and Israel are not party to the Rome Statute and therefore reject the ICC's jurisdiction..."),

<https://www.state.gov/releases/office-of-the-spokesperson/2025/12/sanctioning-icc-judges-directly-engaged-in-the-illegitimate-targeting-of-israel/>.

¹⁶ Imposing Sanctions on the International Criminal Court, Executive Order 14203 (Feb. 6, 2025) (imposing sanctions on ICC officials and declaring ICC actions against the United States and Israel an "unusual and extraordinary threat to the national security and foreign policy of the United States"),

<https://www.whitehouse.gov/presidential-actions/2025/02/imposing-sanctions-on-the-international-criminal-court/>

¹⁷ Democracy for the Arab World Now (DAWN), International Criminal Court: Investigate Biden, Blinken, and Austin for Aiding and Abetting Israeli Crimes in Gaza (Feb. 2025),

<https://dawnmena.org/international-criminal-court-investigate-biden-blinken-and-austin-for-aiding-and-abetting-israeli-crimes-in-gaza/>

materials¹⁸—including its website and advocacy campaigns—frame these efforts as part of a broader strategy to influence governmental action and public policy, rather than as an exercise in disciplined fiduciary or investment analysis typically applied by pension fiduciaries. Where DAWN invokes fiduciary language, its case for divestment derives from international law obligations and political accountability rather than from the kind of traditional sovereign credit analysis, financial materiality assessment, or investment precedent that pension fiduciaries routinely apply¹⁹.

This approach is consistent with a broader divestment playbook²⁰, commonly associated with BDS-aligned campaigns, in which narrow, symbolic financial instruments are targeted first to establish precedent, normalize exclusion, and lower the barrier for subsequent expansion across issuers and asset classes. Experience with divestment campaigns at universities and other fiduciary institutions demonstrates that such campaigns frequently seek to leverage institutional portfolios to advance policy or political objectives external to investment management.

SECTION III — THREE REASONS DAWN’S MEMORANDUM IS FLAWED

DAWN’s memorandum falls short as a fiduciary analysis in three fundamental respects. What follows examines each in turn.

A. DAWN DOES NOT APPLY STANDARD RISK ANALYSIS USED BY PENSION FUNDS

DAWN’s memorandum cites credit rating downgrades and selected debt metrics, but does not conduct sovereign credit analysis or apply recognized fiduciary methodologies. While it invokes terms such as "liquidity," it does not assess Israel's fiscal capacity, revenue base, economic resilience, foreign currency reserves, institutional stability, or willingness to repay—the core components of standard repayment analysis used by pension fiduciaries and credit analysts. Nor does it explain how any cited indicators materially impair Israel’s capacity or willingness to service its debt. Instead, the memorandum treats financial indicators as evidence of generalized political or reputational risk, rather than applying them to evaluate creditworthiness in a manner consistent with market practice.

Their memorandum cites no controlling fiduciary statutes, relevant case law, regulatory guidance, or enforcement precedent applicable to U.S. public pension fiduciaries, and therefore

¹⁸ DAWN publicly characterizes its activities under the heading “Advocacy,” emphasizing efforts to influence U.S. and international foreign policy through campaigns, legal submissions, and governmental engagement. DAWN, Advocacy, <https://dawnmena.org/advocacy/>

¹⁹ Democracy for the Arab World Now (DAWN), New York City and New York State: Cease Unlawful and Dangerous Investments in Israel Bonds (press release, Jan. 2026) (asserting that investment decisions themselves violate international law and urging divestment as a political and moral imperative, rather than engaging in fiduciary or credit-risk analysis under U.S. law), <https://dawnmena.org/new-york-city-and-new-york-state-cease-unlawful-and-dangerous-investments-in-israel-bonds/>

²⁰ Anti-Defamation League, The Slippery Slope of Divestment Campaigns (Sept. 9, 2024), <https://www.adl.org/resources/article/slippery-slope-divestment-campaigns>, describing how divestment campaigns—particularly those targeting Israel—frequently begin with narrow or symbolic investment actions and subsequently expand to broader issuer and asset-class exclusions.

provides no usable framework that fiduciaries could use to evaluate risk under New York law in real-world investment decision-making.

Recognized sovereign credit-risk analysis evaluates an issuer's capacity and willingness to meet its debt obligations using established indicators such as fiscal position, debt burden, revenue base, economic resilience, market access, liquidity, and institutional stability²¹ (see Appendix A). This analysis is forward-looking, comparative, and grounded in financial data and observable risk factors relevant to repayment. Where geopolitical conflict or international controversy is considered, it is assessed through its measurable impact on these underlying credit fundamentals. Political and geopolitical developments can be important components of sovereign risk analysis; however, under recognized methodologies they are evaluated through their effect on repayment capacity, fiscal strength, and market access. Without this type of analysis, fiduciaries cannot determine whether an asserted risk is financially material or relevant to investment decision-making for a bond issuer. Put simply, DAWN never analyzes Israel's ability or willingness to repay its bond obligations, which is the core question in any credit-risk assessment.

Instead, DAWN substitutes advocacy-driven international commentary for the methodologically grounded legal and financial analysis required of fiduciaries. The sources on which DAWN relies reflect contested political and institutional positions within international bodies²², rather than binding legal obligations, enforceable standards, or accepted methodologies governing fiduciary decision-making under U.S. or New York law. By treating contested legal and political allegations as inherently disqualifying—rather than evaluating their impact on repayment capacity or market access—DAWN departs from the analytical frameworks actually used by pension funds and credit-rating agencies. This approach—treating political positions as financial risk factors without conducting standard credit analysis—falls outside recognized fiduciary methodologies used by pension funds.

B. DAWN MISAPPLIES INTERNATIONAL LAW UNDER NEW YORK STANDARDS

DAWN's memorandum treats non-binding international opinions as enforceable legal obligations and advances speculative theories of liability with no basis in U.S. law or in the legal frameworks that govern U.S. public pension funds. DAWN presents its position as consistent with New York public policy by characterizing divestment from Israel Bonds as a legally compelled outcome²³.

²¹ S&P Global Ratings, Israel Outlook Revised To Stable From Negative; "A/A-1" Ratings Affirmed (Nov. 7, 2025) (affirming Israel's sovereign credit ratings following assessment of fiscal position, economic resilience, and market access), <https://www.spglobal.com/ratings/en/regulatory/article/-/view/sourceid/101656119> .

²² Anti-Defamation League, Francesca Albanese in Her Own Words (documenting public statements by the UN Special Rapporteur on the Occupied Palestinian Territories reflecting longstanding and adversarial positions toward Israel), <https://www.adl.org/resources/article/francesca-albanese-her-own-words>

²³ DAWN Memorandum (Jan. 2026), Introduction (asserting that continued or expanded investment in Israel Bonds "breaches legal and fiduciary duties"); Conclusion (urging public officials and institutional fiduciaries to suspend new investment and reassess existing holdings), <https://dawnmena.org/wp-content/uploads/2026/01/Memorandum-final.pdf>.

Their memorandum repeatedly characterizes continued investment as a “breach” of fiduciary duty under “New York law” and warns that such investments “raise substantial exposure under both international and domestic complicity doctrines.” DAWN goes further, asserting that fiduciaries who continue to hold Israel Bonds could “trigger investigative or prosecutorial attention” under theories of universal jurisdiction²⁴. This framing relies more on rhetoric than on the disciplined application of governing fiduciary standards. It also implies alignment with New York public policies. In reality, New York State has explicitly taken the opposite position.

Through Executive Order No. 157²⁵, New York has unequivocally rejected the BDS campaign and declared that the State will not permit its own investment activity to further BDS objectives, whether directly or indirectly. While Executive Order No. 157 does not govern independent fiduciary decision-making by public pension trustees²⁶, it constitutes a formal statement of executive branch policy regarding the use of state investment activity in connection with BDS. DAWN’s memorandum therefore advances an advocacy position that is inconsistent with that articulated executive policy framework.

International law and human rights norms can play an important role in global governance and diplomacy. However, under the U.S. constitutional system, international opinions do not automatically override state law or create enforceable obligations for public pension fiduciaries unless they have been incorporated into domestic law through ratification and implementing legislation. New York pension trustees are therefore required to apply governing U.S. and New York fiduciary standards when making investment decisions, rather than treating non-binding international statements as controlling legal authority. DAWN’s memorandum inverts this framework by asserting that non-binding international statements create legal liability for individual fiduciaries—an approach that effectively substitutes intimidation for analysis.

At a more basic level, DAWN’s approach conflicts with long-standing principles of U.S. constitutional law that place primary responsibility for foreign policy and sanctions decisions with the federal government and limit states from acting as independent foreign-policy actors.²⁷ Supreme Court precedent makes clear that state and local actors may not adopt measures that function as foreign-policy judgments or de facto sanctions regimes outside a traditional investment-risk framework, even when framed in terms of ethics, human rights, or fiduciary risk. By urging state and local pension fiduciaries to treat international legal allegations against a foreign sovereign as a basis for divestment and asserted legal exposure, DAWN’s memorandum invites fiduciaries to operate as surrogate enforcers of international law, an area constitutionally committed to federal authority rather than state or municipal decision-making.

²⁴ DAWN Memorandum (Jan. 2026), Section II.3 (warning that investments in Israel Bonds “raises substantial exposure under both international and domestic complicity doctrines”); Section IV.2 (asserting that fiduciaries “could trigger investigative or prosecutorial attention”), <https://dawnmena.org/wp-content/uploads/2026/01/Memorandum-final.pdf>.

²⁵ N.Y. Exec. Order No. 157 (Andrew M. Cuomo), Directing State Agencies and Authorities to Divest Public Funds Supporting BDS Campaign Against Israel (June 5, 2016), https://www.governor.ny.gov/sites/default/files/atoms/files/EO_157_new.pdf.

²⁶ Public pension fiduciary duties set forth in New York arise from the New York Constitution, New York regulations, and New York trust law, and are not modified by executive orders directed to executive branch agencies.

²⁷ *Zschernig v. Miller*, 389 U.S. 429, 432–36 (1968) (invalidating state action that, in operation, intruded into the field of foreign affairs constitutionally reserved to the federal government); *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 373–80 (2000) (holding that state measures operating as de facto sanctions are preempted where they interfere with federal foreign-policy objectives established by Congress and the Executive); *American Ins. Ass’n v. Garamendi*, 539 U.S. 396, 413–20 (2003) (state law preempted where it conflicted with the federal government’s conduct of foreign relations, including executive agreements).

The contrast is notable. Major credit-rating agencies continue to assess Israel using the same sovereign risk frameworks applied globally, weighing fiscal capacity, market access, and macroeconomic resilience. The point is straightforward: genuine credit analysis is conducted through market-based methodologies—not advocacy-driven theories of legal “complicity” designed to frighten fiduciaries toward predetermined outcomes.

C. DAWN’S FRAMEWORK RISKS CREATING A SLIPPERY SLOPE FOR DIVESTMENT

The framework DAWN advances lacks any limiting principle that would allow fiduciaries to apply it in a consistent or predictable way. For example, if it were to be applied consistently, it would require divestment not only from Israeli instruments, but from U.S. defense, technology, financial, and industrial firms that conduct business in Israel—based solely on lawful commercial activity rather than credit risk or investment fundamentals relevant to portfolio management.

Once divestment is adopted in response to political pressure, it rarely remains confined to a single issuer, country, or asset class because similar arguments can be extended to other investments. The same reasoning DAWN uses here could be invoked to challenge any issuer or company operating in jurisdictions subject to political or human-rights criticism.

Analysis of analogous divestment campaigns demonstrates that such demands often expand beyond initial targets to pooled investment vehicles and broader categories of issuers. Over time, the scope tends to widen across asset classes and unrelated issues, undermining diversification and the fiduciary duty to manage risk and return. In fixed-income portfolios specifically, precedent-setting exclusions based on advocacy criteria raise serious administrability concerns for trustees charged with managing large, diversified portfolios and invite pressure to reassess sovereign issuers for reasons unrelated to credit fundamentals.

The governance costs of divestment are well established in similar institutional settings. Professors Max Schanzenbach and Robert Sitkoff of Northwestern and Harvard law schools, respectively, document²⁸ that universities maintaining divestment policies face persistent lobbying, ongoing definitional debates about terms like “genocide” and “apartheid,” increased administrative costs for evaluating petitions, and mission creep as boards are pressured to make moral judgments on a host of contested geopolitical issues. Moreover, such campaigns face structural barriers to effectiveness: alternative investors typically step in to fill demand, substitute activities emerge, and the targeted entity usually has access to diverse funding sources. These governance burdens and practical limitations could similarly affect pension systems, diverting trustee attention from their core mandate while failing to achieve stated objectives.

²⁸ Max M. Schanzenbach & Robert H. Sitkoff, *University Trustees Should Say No to Divestment*, (forthcoming George Mason Law Review 2026) (documenting governance costs, administrative burdens, and structural barriers to divestment effectiveness).

Where similar exclusionary frameworks have been applied to equity portfolios, divestment strategies may reduce diversification and introduce portfolio inefficiencies relative to engagement-based approaches. Research comparing divestment and engagement strategies indicates that engagement is often more effective than divestment in influencing corporate behavior, while divestment may have limited impact on underlying outcomes. Taken together, these findings underscore the importance of evaluating exclusionary policies within a fiduciary framework focused on risk, return, and real-world effectiveness²⁹.

SECTION IV — CONCLUSION

The case against divestment is particularly strong for public pension funds. Leading fiduciary law scholars have concluded that divestment policies create legal and governance risks even for university endowments, which operate under more permissive fiduciary standards than public pension funds. Schanzenbach and Sitkoff conclude that universities should commit to non-divestment policies because divestments create legal risks, increase administrative costs, rarely achieve intended effects, and contradict the university's educational mission³⁰. If divestment fails basic cost-benefit scrutiny for universities with their broader mandates, it fails with even greater force for pension funds whose sole purpose is retirement security for beneficiaries.

Whether a government-affiliated pension chooses to hold Israel Bonds is a discretionary fiduciary decision that is appropriately evaluated on traditional investment grounds focused on risk, return, and repayment, not under pressure from campaigns that misuse international law, exaggerate legal risk, and seek to coerce predetermined political outcomes. Taken to its logical conclusion, DAWN's framework would require divestment across major sectors of the U.S. economy—including defense, technology, and finance—based solely on lawful activity, rather than on fiduciary process or credit fundamentals used by pension trustees.

Moreover, DAWN's memorandum relies on international legal theories that have no enforcement mechanism in U.S. law and no basis in New York fiduciary standards. As discussed above, DAWN has publicly called for International Criminal Court investigations of Israeli and U.S. officials, notwithstanding the United States' non-party status under the Rome Statute.³¹ DAWN now tries to apply this same approach to pension fiduciaries—claiming that holding bonds issued by a *U.S. treaty ally* creates criminal "complicity" risk under international law. Human-rights rhetoric and allegations of criminal liability cannot substitute for a disciplined assessment of financial materiality and repayment risk.

²⁹ Matthew E. Kahn, Chong Shu & John G. Matsusaka, *Divestment and Engagement: The Effect of Green Investors on Corporate Carbon Emissions*, Harvard Law School Forum on Corporate Governance (Nov. 6, 2023), (stating that divestment may be ineffective and counterproductive compared to engagement), <https://corpgov.law.harvard.edu/2023/11/06/divestment-and-engagement-the-effect-of-green-investors-on-corporate-carbon-emissions/>

³⁰ Max M. Schanzenbach & Robert H. Sitkoff, *University Trustees Should Say No to Divestment*, (forthcoming George Mason Law Review 2026) (arguing universities should adopt categorical non-divestment policies on pragmatic grounds).

³¹ U.S. Dep't of State, *Sanctioning ICC Judges Directly Engaged in the Illegitimate Targeting of Israel* (Dec. 18, 2025) ("...the United States and Israel are not party to the Rome Statute and therefore reject the ICC's jurisdiction..."), <https://www.state.gov/releases/office-of-the-spokesperson/2025/12/sanctioning-icc-judges-directly-engaged-in-the-illegitimate-targeting-of-israel/>.

Indeed, while fiduciary law does not prevent investors from caring about broader policy, ethical, or communal goals, it requires that such issues be considered within a broader framework that evaluates risk and return using a clearly articulated rationale, applied consistently and transparently, and with the financial interests of the beneficiaries as the primary consideration. Put differently, values-based considerations may play a role, but they cannot be the only or deciding factor. Rather, public pension trustees are required to follow a consistent, financially grounded process designed to protect retirement assets. These core elements of sound fiduciary governance, recognized by investment professionals and reflected in fiduciary standards, exist to ensure that investment decisions remain focused on beneficiary interests rather than external pressure³².

Public officials and pension trustees may reasonably view the DAWN memorandum as a political pressure document rather than a credible fiduciary or legal analysis under governing U.S. or New York law. Indeed, the DAWN memorandum does not provide a recognized framework for evaluating sovereign bond risk under New York law. Pension fiduciaries must apply established credit-risk analysis and governing legal principles—not advocacy-driven theories—when making investment decisions.

³² CFA Institute, *Environmental, Social, and Governance Issues in Investing: A Guide for Investment Professionals* (2015), esp. Chapters 1.5 (Moral Values vs. Economic Value), 2.1 (Exclusionary Screening), 3.1 (Disclosure), and 3.2 (Fiduciary Responsibility). <https://www.cfainstitute.org/sites/default/files/-/media/documents/article/position-paper/esg-issues-in-investing-a-guide-for-investment-professionals.pdf>

APPENDIX A: ILLUSTRATIVE FRAMEWORK — STANDARD SOVEREIGN CREDIT-RISK ANALYSIS

The following is an illustrative summary of the principal categories and indicators commonly used by credit-rating agencies, institutional investors, and pension fiduciaries when evaluating sovereign creditworthiness. It is not exhaustive, but reflects widely recognized analytical practice³³. DAWN's memorandum does not systematically engage these categories through a recognized sovereign credit-risk framework, nor does it integrate them into a forward-looking assessment of capacity and willingness to repay, as would be expected under standard fiduciary or rating-agency methodology.

- 1. Fiscal Position and Debt Sustainability.** Government revenues and expenditures as a share of GDP; primary and overall fiscal balance; debt-to-GDP level and trajectory; gross financing needs; interest expense as a share of revenue; debt maturity profile and rollover risk.
- 2. Economic Fundamentals.** Real GDP growth (level and trend); GDP per capita; economic diversification; inflation level and stability; labor-market conditions; productivity growth; potential output estimates.
- 3. External Position and Balance of Payments.** Current-account balance as a share of GDP; external debt metrics; foreign-exchange reserves relative to imports and short-term debt; net international investment position; terms of trade; export concentration and market access.
- 4. Monetary and Exchange-Rate Framework.** Exchange-rate regime and flexibility; central-bank independence and credibility; inflation-targeting record; monetary-policy transmission; exposure to dollarization or currency-substitution risk.
- 5. Institutional Strength and Governance.** Rule of law; regulatory quality; government effectiveness; control of corruption; policy stability and predictability; quality of fiscal institutions; transparency of the budgetary process.
- 6. Capacity and Willingness to Repay.** Debt-service history; access to international capital markets; relationships with multilateral lenders; demonstrated capacity to implement fiscal adjustment; material contingent liabilities (e.g., banking sector or state-owned enterprises).

³³ See, e.g., Moody's, Sovereign Ratings Methodology, <https://www.moody.com/web/en/us/solutions/ratings/sovereign-methodology.html>; S&P Global Ratings, How We Rate Sovereigns, https://www.spglobal.com/content/dam/spglobal/ratings/en/documents/pdfs/021519_howweratesovereigns.pdf; Fitch Ratings, Sovereigns Rating Criteria, <https://www.fitchratings.com/criteria/sovereigns> (describing evaluation of fiscal strength, economic fundamentals, external position, monetary and exchange-rate framework, institutional strength, and capacity and willingness to repay as core components of sovereign credit analysis).

7. Market-Based Indicators. Sovereign CDS spreads; bond-yield spreads relative to benchmarks (e.g., U.S. Treasuries); secondary-market liquidity; credit-rating agency assessments (Moody's, S&P, Fitch), including rating levels, outlooks, and watch status.

Standard sovereign credit analysis integrates these categories to assess an issuer's capacity and willingness to meet its debt obligations on a forward-looking and comparative basis. Where geopolitical conflict or international controversy is relevant, it is evaluated through its impact on underlying credit fundamentals—such as fiscal strength, economic performance, institutional stability, and market access—rather than treated on its own without assessing its measurable effect on repayment and financial performance. Political and geopolitical developments are important parts of sovereign risk analysis, but they are assessed based on their material impact on creditworthiness. A memorandum purporting to assess fiduciary risk associated with sovereign bond holdings would be expected to engage substantively with these categories.