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RISKY BUSSINESS
Airbnb's Complicity in Human Rights Violations in Israel's West Bank
Settlements

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Abstract

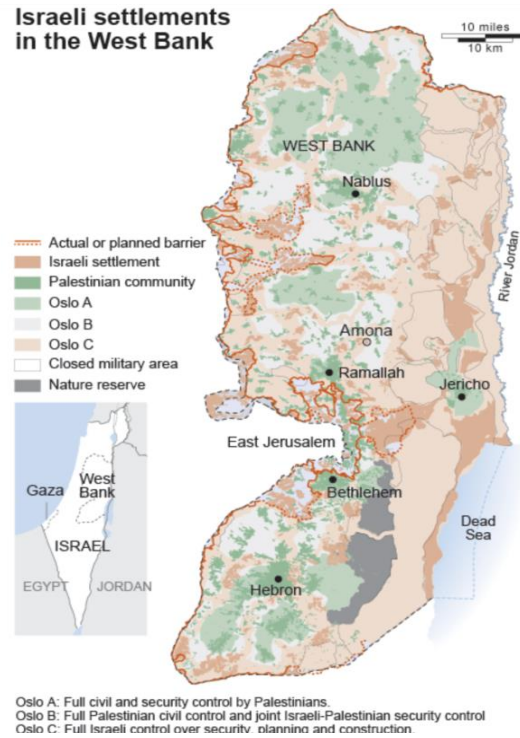
In January 2016 Airbnb came under fire for listing homes in Israeli Settlements located in the occupied West Bank. A coalition of human rights organizations, corporate social responsibility groups, and over 150,000 civil society activists came together in response to demand that Airbnb stop listing homes in Israeli settlements, united under the slogan “Palestinians cant #livethere, so don’t go there.” This demand is part of a larger framework of human rights groups advocating for Palestinian rights and against the proliferation of illegal Israeli Settlements, as well as human rights groups advocating for corporations to uphold human rights standards throughout their business procedures. This paper examines the human rights responsibilities that Airbnb must maintain in relation to Israeli settlements. It then proceeds to review the relevant legal channels available to hold Airbnb accountable for complicity in Israeli violations of international law.

Table of Contents

INTRODUCTION	2
POLITICAL FRAMEWORK	6
LEGALITY OF ISRAELI SETTLEMENTS	6
ISRAELI SETTLEMENTS VS. ISRAELI SETTLEMENT-OUTPOSTS	10
LEGALITY OF ACTIVITY WITHIN ISRAELI SETTLEMENTS IN THE WEST BANK	10
NORMATIVE FRAMEWORK	14
LITERATURE REVIEW.....	17
AIRBNB AND THE UNGPS ON BUSSINESS AND HUMAN RIGHTS.....	19
AIRBNB’S LEGAL LIABILITY UNDER INTERNATIONAL CRIMINAL LAW.....	21
LEGAL FRAMEWORK	20
JURISDICTIONS.....	26
<i>International Criminal Court (ICC)</i>	27
<i>Courts with Universal Jurisdiction Statutes</i>	28
<i>US Civil Courts: The Alien Tort Claims Act</i>	33
AIRBNB’S LEGAL LIABILITY UNDER THE LAW OF CIVIL REMEDIES.....	36
<i>LEGAL FRAMEWORK: THIRD PARTY LIABILITY UNDER THE LAW OF CIVIL REMEDIES</i>	38
<i>CIVIL LIABILITIES FOR CORPORATE TRANSGRESSIONS</i>	42
<i>False Advertisement</i>	42
<i>Discrimination</i>	50
CONCLUSION	53
APPENDIX	57
WORKS CITED.....	59

Introduction

In response to Jewish settlers listing their properties for rent on Airbnb, Husam Zomlot, the ambassador at large for the Palestinian government, stated, “It’s not only controversial, it’s illegal and criminal. This website is promoting stolen property and land. There will come a time when companies like this, who profit from the occupation, will be taken to court.”¹ Airbnb, the San Francisco based home-sharing company valued around \$25 billion, came under fire in January 2016 for listing dozens of home-rentals located in Israeli settlements within the West Bank. Further, while Airbnb maintains listings in both Israel and the Palestinian Territories, a search for homes in the Palestinian Territories turns up properties in Ramallah and Nablus, while homes in settlements such as Efrat, Tekoa, and Ma’ale Rehavam are listed as being located within the State of Israel.²



The international community views Israeli settlements in the Palestinian territories as illegal (the U.S. deems them “illegitimate”), and settlement expansion is regarded as one of the main roadblocks obstructing a two-state solution.³ Continued settlement expansion fuels distrust

¹ Erlanger, Steven. "West Bank Settlers' Listings on Airbnb Draw Palestinian Anger." New York Times 7 February 2016.

² Kate Shuttleworth, Julia Carrie Wong. "Airbnb lists properties in illegal Israeli settlements." The Guardian 16 January 2016.

³ This was recently re-affirmed in UN Security Council Resolution 2334 (2016); 14 members of the 15-member council voted in favor and the US abstained—a noteworthy move, as the US typically uses its veto power to block any Israel-related resolution.

in the Palestinian public regarding Israel's commitment to peace and also further complicates the land-swaps that will most likely have to occur in a final resolution. Additionally, the policies set forth to ensure settler security, such as repositioning of the security barrier, checkpoints, and settler-only roads, pose a burden to the day-to-day lives of Palestinians. Such practices further entrench feelings of resentment and perpetuate the conflict.

Despite attempts from the United Nations and the US to pressure the Israeli government to halt settlement expansion, settlements have surged under Prime Minister Benjamin Netanyahu's government. According to B'Tselem "the annual growth rate for the settler population (excluding East Jerusalem) in 2013 was more than two and a half times higher than that of the overall population in Israel: 4.4% and 1.9% percent, respectively." They estimate that the current settler population in the West Bank is upwards of 547,000.⁴ These Jewish settlers maintain full Israeli citizenship, in stark contrast to their neighbors – the approximately 2.5 million Palestinians living in the West Bank who are subject to occupation.⁵

The presence of Airbnb in the Palestinian territories is controversial for several reasons. Firstly, Airbnb profits from properties located within illegal settlements and therefore aids and abets the commission of the crime. John Dugard, professor of international law and former UN special rapporteur on Palestinian human rights, explained that Airbnb "could in theory be prosecuted in [a European Union] country with aiding and abetting the commission of a crime... [due to] making money from property built on [an] illegal settlement."⁶ Secondly, the listing of Jewish Settlements in the West Bank as located in the State of Israel is false advertisement and

⁴ See: <http://www.btselem.org/settlements/statistics>; <http://fmep.org/resource/comprehensive-settlement-population-1972-2010/>

⁵ Ibid.

⁶ Erlinger, Steven. "West Bank Settlers' Listings on Airbnb Draw Palestinian Anger." New York Times 7 February 2016.

does not afford Airbnb guests the information necessary to make an informed decision regarding their consumer activity. Thirdly, Palestinians themselves cannot legally stay in these Airbnb listings, and other Arabs who have applied to stay in them have been rejected, suggesting that Airbnb's platform permits discrimination.⁷

Palestinians have responded to Airbnb's actions by calling for a boycott of the company, and Secretary General of the Palestinian Liberation Organization (PLO) Saeb Erekat – former chief negotiator at the Oslo Accords – wrote a letter to Airbnb's CEO Brian Chesky on January 16th, 2016. He condemned the company's actions and called on Chesky to act promptly:

“The prevalence and sheer volume of listings of illegal Israeli settlements on Occupied Palestinian land reveals an intended result and not an innocuous oversight...by promoting these listings on your company's website, Airbnb is effectively promoting the illegal Israeli Colonization of occupied land. As a company boasting a presence in over 190 countries worldwide, Airbnb has both a legal and ethical responsibility to promote safe, reliable, and lawful service to its customers, in line with both local and international laws and regulations.”⁸

Erekat cited the Fourth Geneva Convention and the Rome Statute of the International Criminal Court (ICC) and called on Airbnb to “investigate its undertakings in the West Bank and end its operations in illegal Israeli settlements, in line with international law and regulations.”⁹

⁷ Kate Shuttleworth elaborates on a settler's response to an Arab inquiry in her article: “one response to an inquiry about a listing in the settlement of Tekoa was particularly tenderizing: ‘I'm very sorry but I don't think that it's possible ... it's very sensitive here ... [I] hope that in [a] different life we could be good friends.’” For more info, see: Kate Shuttleworth, Julia Carrie Wong. "Airbnb lists properties in illegal Israeli settlements." *The Guardian* 16 January 2016.

⁸ For the full letter, see: http://nad-plo.org/userfiles/file/Letters/Letter_Dr_Saeb_Airbnb.pdf

⁹ Ibid.

Journalists Kate Shuttleworth and Julia Carrie Wong reported that some Jewish settlers have responded to the controversy by “encouraging more residents to list their homes on the site as a new platform to promote their intention to expand the state of Israel beyond its pre-1967 lines.”¹⁰

In response to accusations in January, Airbnb spokesman Nick Papas stated, “We follow laws and regulations on where we can do business and investigate concerns raised about specific listings.”¹¹ However, when asked which specific laws and regulations Airbnb abided by, Papas would not respond.

An international coalition of human rights organizations and corporate responsibility groups soon formed the alliance Stolen Homes in order to oppose Airbnb’s presence in Israeli Settlements in the West Bank. They delivered a petition on March 10, 2016 with over 140,000 signatures to Airbnb’s SF headquarters demanding that Airbnb “immediately end the illegal practice of listing vacation rentals in Israeli settlements in the occupied West Bank.”¹² However, Airbnb sent security to prevent the activists from entering the building, refused to engage with the activists and disregarded subsequent requests for a meeting. On account of mounting pressure, Airbnb released an official statement in the San Francisco Chronicle in March:

¹⁰ Kate Shuttleworth, Julia Carrie Wong. "Airbnb lists properties in illegal Israeli settlements." The Guardian 16 January 2016.

¹¹ Ibid.

¹² For the full petition, see: https://jewishvoiceforpeace.org/stolen-homes/http://www.salon.com/2016/03/11/airbnb_profits_off_stolen_homes_140000_people_peace_groups_call_to_stop_rentals_in_illegal_israeli_settlements/

“This particular issue is complex: people have been debating this matter for 5,000 years, so a hospitality company from San Francisco isn’t going to have all the answers but at the end of the day, we want to help open the world, not close it off.”¹³

Airbnb is correct in that this issue is unarguably complex. However, this case is not without precedent. International laws, regulations, and guiding principles exist to inform companies doing business in conflict zones about their legal and ethical business-responsibilities. Airbnb’s policies and brief statement suggest that Airbnb does not hold itself accountable to these laws and regulations dictating where and how it can do business.

In light of this controversy, this paper will 1) evaluate Airbnb’s business responsibilities in the West Bank; 2) examine the actions Airbnb has taken to ensure proper due diligence measures and mitigate human rights harms in its business platform; 3) determine Airbnb’s third-party legal obligations and liability based on the current international legal framework; 4) determine Airbnb’s legal obligations and liability based on the current US legal framework; 5) Provide Airbnb with preventative measures that it can implement to avoid allegations.

Political Framework

Legality of Israeli Settlements:

Both the applicability of the Fourth Geneva Convention, relative to the Protection of Civilian Persons in Times of War, and whether Israeli settlements are legal under the stipulations of the convention remains under dispute.¹⁴ While Israel’s High Court of Justice has declined to

¹³ For the accompanying article, see: Thomas Lee. “Airbnb stumbles yet again, this time with West Bank settlements.” The San Francisco Chronicle 10 March 2016

¹⁴ Israel Ministry of Foreign Affairs . Israel, the Conflict and Peace: Answers to frequently asked questions. 1 November 2007.

rule on the legality of settlements, the Israeli government maintains that settlements in the West Bank are authorized, legal, consistent with international law, and that the Fourth Geneva Convention does not apply to the territories of the West Bank and Gaza.¹⁵ On the other hand, the United Nations (UN) and the International Court of Justice (ICJ) maintain that the settlements in the West Bank are illegal and in violation of the Fourth Geneva Convention regarding the laws of occupation.

Article 2 of the Fourth Geneva Convention applies it to “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them [as well as] all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”¹⁶ Israel refutes the applicability of Article 2 to the case of the Palestinian territories. It holds that the Palestinian territories cannot be considered the territory of a high contracting party as the territory came under Israeli control in a war of self-defense, and because the territory was not previously under the legitimate sovereignty of the Palestinians, but rather that of Egypt and Jordan who no longer lay claim to the territory.¹⁷ The International Court of Justice dismissed this argument in its advisory opinion to the UN General Assembly in 2004, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. It held that Article 2 applies to all instances of armed conflict, regardless of a territories’ sovereign status prior to the conflict. It explained that the drafters of the Geneva Conventions never intended to limit the scope of the conventions, as confirmed in the Geneva Convention’s *travaux*

¹⁵ Sandoun, Sarah. “Responsible Business in Occupied Territories.” 21 June 2016. [Harvard International Review](#).

¹⁶ Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

¹⁷ Israel Ministry of Foreign Affairs . [Israel, the Conflict and Peace: Answers to frequently asked questions](#). 1 November 2007.

preparatoires.¹⁸ The Court also recalled General Assembly Resolution 2625, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, which renders illegal any territorial acquisition resulting from the threat or use of force. Furthermore, the International Committee of the Red Cross (ICRC)—mandated through the Geneva Conventions to uphold international humanitarian law—has continuously maintained the applicability of the Fourth Geneva Convention to the Palestinian territories, and the United Nations Security Council—the only legally binding arm of the United Nations— also affirmed the applicability of Geneva Four in Resolution 446 (1979) which states that “the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem.”¹⁹

Under the stipulations of the Fourth Geneva Convention, an occupying power is prohibited from forcibly transferring or deporting the population of an occupied territory from its land – within or outside of the occupied territory—and from transferring its own citizens into the territory that it is occupying.^{20, 21} This would render Israeli settlements illegal. While Israel’s Supreme Court has declined to make a ruling regarding their legality, Israel’s Ministry of Foreign Affairs claims that settlements are legal because the Fourth Geneva Convention only applies to forcible transfers and not *voluntary* transfers—a position at odds with the inherent

¹⁸ *United Nations, International Court Of Justice Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: Advisory Opinion (9 July 2004)*

¹⁹ United Nations Security Council resolution 446 *Territories Occupied by Israel*, SC/Res/446 (22 March 1979)

²⁰ International Committee Of The Red Cross. "Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949." Diplomatic Conference of Geneva of 1949. Geneva, 1949. 153-221. (Geneva 4, Article 49, paragraph 1 and 6 respectively)

²¹ Israel Ministry of Foreign Affairs . Israel, the Conflict and Peace: Answers to frequently asked questions. 1 November 2007.

wording of the convention. Additionally, Israel's Ministry of Foreign Affairs claims that population transfers into the occupied land are only prohibited under paragraph 6 of Article 49 if those transfers displace the local population, though this is not explicitly stated in the wording of the convention and the International Committee of the Red Cross's commentary on the Geneva Convention contradicts this interpretation. US State Department Legal Advisor Herbert Hansell also dismissed Israel's stance, explaining that "Displacement of protected persons is dealt with separately in the Convention and paragraph 6 would seem redundant if limited to cases of displacement."²² The International Court of Justice's 2004 Advisory Opinion to the GA affirmed that "Israeli settlements in the OPT (including East Jerusalem) have been established in breach of international law," thereby confirming Israeli Settlements as illegal in the eyes of the international community.

Lastly, the United States government, Israel's largest ally, has condemned Israel's policy of settlement expansion since 1967. The US had termed the settlements "illegal" under international law until 1981, when Reagan's more conservative administration took over, and it continues to deem them illegitimate and counterproductive to the maintenance of regional peace and stability.²³ This was recently reaffirmed when the US declined to veto UN Security Council Resolution 2334 (2016), which declared that settlements have no legal validity.

For the purposes of this paper, the legality of the settlements will be consistent with the view of the international community.

²² "Letter of the State Department Legal Advisor, Mr. Herbert J. Hansell, Concerning the Legality of Israeli Settlements in the Occupied Territories", cited in *Progress report – The human rights dimensions of population transfer including the implantation of settler* prepared by Mr. Awn Shawhat Al-Khasawneh

²³ Leverett, Flint (2009). "A Road Map to Nowhere". *Foreign Policy*.

Israeli Settlements vs. Israeli Settlement-Outposts

While Israeli settlements are considered legal by the Israeli government, Israeli settlement-outposts are similar to settlements, but are built without the planning and construction statutes that are necessary for authorization. While international law makes no distinction and considers both of these illegal, outposts are considered unauthorized or illegal under Israeli law.²⁴ The 2005 Sasson report, commissioned by former Prime Minister Ariel Sharon, explained that “there was no government decision to establish it, and in any case no authorized political echelon approved its establishment; the outpost was established with no legal planning status. Meaning, with no valid detailed plan governing the area it was established upon, which can support a building permit...” It concluded, “An unauthorized outpost is not a “semi legal” outpost. Unauthorized is illegal.”²⁵ While the Quartet Roadmap, endorsed by the Security Council in Resolution 1515 (2003), called for settlement-outposts to be dismantled, many are being retroactively legalized under Netanyahu’s government.²⁶ Ma’ale Rehavam, one of the West Bank neighborhoods where Airbnb maintains listings, is an Israeli settlement-outpost.

Legality of Activity Within Israeli Settlements in the West Bank

In addition to being inherently illegal, the existence and expansion of settlements infringes on fundamental Palestinian rights. All Israeli settlements in the West Bank are located in Area C, which comprises 61% of the West Bank and is under Israel’s exclusive civil and

²⁴ Talya Sason, Adv. “Summary Of The Opinion Concerning Unauthorized Outposts.” Israel Ministry of Foreign Affairs 10 March 2005

²⁵ Talya Sason, Adv. “Summary Of The Opinion Concerning Unauthorized Outposts.” Israel Ministry of Foreign Affairs 10 March 2005

²⁶ See: The Quartet Roadmap; Resolution 1515 (2003)

military control. The estimated 300,000 Palestinians that live in Area C face regular injustices, particularly in relation to land rights, water rights, freedom of movement, and security of person.

While the Israeli government offers a range of economic incentives to draw settlers and settlement businesses to the West Bank, it prohibits Palestinians from doing construction on 70% of Area C, impeding their ability to develop for industrial, residential, or commercial purposes. In order to construct on the remaining 30% of land in Area C, Palestinians must first obtain a military permit. Applications for these permits are expensive and maintain a meager 5% approval rating. As a result, many Palestinians are pressured to build their homes without authorization, which in turn leads the Israeli military to regularly demolish many of these homes.²⁷ Former US Secretary of State John Kerry stated that Area C “is effectively restricted for any Palestinian development, and that in 2014, his office had noted only one building permit had been granted to Palestinian residents of the area.”²⁸ In 2016, Israeli forces demolished an estimated 510 Palestinian homes built without permits in the West Bank, forcibly evicting approximately 610 people.²⁹

Israel also controls most of the water sources in Area C and restricts Palestinian residents’ access to them; the water system that serves settlements in Area C is inaccessible to approximately 70% of Palestinian villages within this zone.³⁰ As a result, water consumption in

²⁷According to B’tselem, the Israeli Information Center for Human Rights in the Occupied Territories, “the Civil Administration refuses to prepare master plans for the Area C communities and draws on the absence of these plans to justify the prohibition of virtually all Area C construction and infrastructure hook-ups.” See: B’Tselem - The Israeli Information Center for Human Rights in the Occupied Territories. "Acting the Landlord: Israel's Policy in Area C, the West Bank." June 2013.

<http://www.btselem.org/publications/summaries/201306_acting_the_landlord>.

²⁸Redden, Killian. "Kerry: Israel 'imperiling' two-state solution." Ma'an News Agency 6 December 2016.

²⁹ Amnesty International “Annual Report: Israel And Occupied Palestinian Territories 2015/2016”

<<https://www.amnesty.org/en/countries/middle-east-and-north-africa/israel-and-occupied-palestinian-territories/report-israel-and-occupied-palestinian-territories/>>

³⁰ B’Tselem - The Israeli Information Center for Human Rights in the Occupied Territories. " Restrictions on access to water and non- development of water infrastructure in Area C." June 2013. Updated 28 Sep 2016.

some West Bank communities is substantially less than the World Health Organization's recommendation of 100 liters per capita per day—according to B'tselem, 42 communities in the southern West Bank use less than 60 liters of water per person per day.³¹ In contrast, the average amount of water allocated to nearby Israeli settlements Ro'i and Beqa'ot is over 460 liters per person per day.³² Palestinians also have virtually no control over their natural resources more generally, as settlement regional councils maintain de facto jurisdiction over 86% of the Jordan Valley and the Dead Sea area, as noted in the Human Rights Council's 2013 report.³³

Lastly, the presence of settlements in the West Bank goes hand in hand with the presence of checkpoints and physical roadblocks. These policies intend to deter specific security threats and to enable the safe passage of settlers throughout the West Bank. The roadblocks divide the West Bank into six distinct sections and thus serve as a major impediment to the daily life of many Palestinians—the roadblocks make it difficult for Palestinians to travel to work, reach medical services, visit relatives and freely transport goods throughout the West Bank.³⁴ They are also inherently discriminatory: they restrict Palestinians' freedom of movement while allowing Israeli settlers to move through them freely.

The UN and ICJ have stated that the policies that Israel has set forth in the West Bank are in violation of international humanitarian law, specifically Israel's obligations to safeguard occupied territory, to refrain from changing the territory and using the territory's resources to benefit itself, and to fulfill the needs and protect the rights of the local population. Furthermore,

³¹ Water consumption is based on domestic, commercial, and industrial consumption. *Ibid.*

³² *Ibid.*

³³ *United Nations Human Rights Council Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem A/HRC/22/63 (7 February 2013)*

³⁴ B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories. " Checkpoints, Physical Obstructions, and Forbidden Roads." 16 June 2011. Updated 20 May 2016.

human rights organizations such as Amnesty International and Human Rights Watch maintain that Israel's policies of house demolitions and forced evictions amount to collective punishment, which is prohibited under Article 33 and 53 of the Fourth Geneva Convention.³⁵ Such accusations are of particular importance, as Article 33 of the Fourth Geneva Convention constitutes collective punishment in occupied territories as a war crime. Additionally, the UN Human Rights Committee stated in its General Comment on Article 4 of the ICCPR relating to states of emergency that States parties may not invoke a state of emergency "as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance...by imposing collective punishments."³⁶

In addition to violating international humanitarian law, Israel's policies in the West Bank violate international human rights law. While Israel asserts that its human rights obligations do not apply to the Occupied West Bank because it is not acting within its own sovereign territory, a state of occupation does not suspend a state's obligations to uphold international human rights law. In fact, the ICRC acknowledges that there are times when extraterritorial applicability of human rights law is subject to debate, but asserts that "military occupation is perhaps one of the least controversial circumstances, and there is solid foundation for the assertion that the Occupying Power must abide by international human rights law."³⁷ Moreover, the ICJ and the

³⁵ Article 33 of the Fourth Geneva Convention prohibits collective punishment, stating that, "No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited." Article 53 recognizes house demolitions as collective punishment: "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons ... is prohibited, except where such destruction is rendered absolutely necessary by military operations." See: Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

³⁶ UN Human Rights Committee (HRC), *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001

³⁷Lubell, Noam. "Human rights obligations in military occupation" International Review of the Red Cross 94.885 (2012).

UN Human Rights Council (UNHRC) refute Israel's view and assert that a state's duties apply to any territory under its effective control.³⁸ Within this framework, Israel's policies constitute violations of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), both of which it ratified in 1991.³⁹ In accordance with the ICJ and UNHRC's views, Israel's settlement policies discriminate against the estimated 300,000 Palestinians in Area C of the West Bank. Specifically, Israel is in violation of the Palestinian's right to non-discrimination and equality before the law as set forth in Article 26 of the International Covenant on Civil and Political Rights, as well as Palestinians' right to non-discrimination with regard to land and housing rights as set forth in Article 2 of the International Covenant on Economic Social and Cultural rights.⁴⁰ More generally, Israel is in violation of Palestinian's right to an adequate standard of living, as described in Article 11 of the ICESCR.⁴¹ Lastly, forced evictions constitute a violation of Palestinian's right to liberty and security of person as enshrined in ICCPR.⁴²

Normative Framework

The UN Guiding Principles for Business and Human Rights (UNGPs) were written by John Ruggie in 2011 and unanimously endorsed by the Human Rights Council in resolution 17/4. They set forth a global framework for businesses to uphold human rights throughout their

³⁸ It should be noted that these bodies, in comparison to the ICRC, have notable political leanings; After the UNHRC voted to compile a list of all businesses operating in Israeli settlements, PM Netanyahu referred to the UN Human Rights Council as an "anti-Israel circus" (See: <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeHebron240316.aspx>)

³⁹ See: <http://indicators.ohchr.org/>

⁴⁰ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966

⁴¹ *Ibid*

⁴² *Ibid*.

business activities. While not legally binding, they remain highly authoritative and have been promoted through the UN Global Compact, the world's largest corporate social responsibility initiative.⁴³ They assert that while states have the duty to *protect* against human rights abuses, businesses have the duty to *respect* human rights throughout their business procedures.⁴⁴ The UNGPs assert that companies maintain the “negative duty” to *do no harm* to rights-bearers through their business practices; they advise companies to prioritize those issues where harms would be irreversible. It specifically directs companies to “avoid causing or contributing to adverse human rights impacts through their own activities [and to] seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”⁴⁵

In order to abide by this *do no harm* directive, the UNGPs advise companies to enact human rights due diligence measures to identify potential human rights violations connected to their own activities and to the activities of those they are linked to through business relationships.⁴⁶ They also advise companies to take steps to mitigate risk of potential human rights harms. In situations where it is not possible to avoid or mitigate human rights harms, the UNGPs advise businesses to cease activity altogether.⁴⁷

The ICRC maintains that businesses that operate in conflict zones are subject to the standards of humanitarian law. It explains that “International humanitarian law states that not only perpetrators, but also their superiors and accomplices may be held criminally responsible

⁴³ See: <https://www.unglobalcompact.org/what-is-gc>

⁴⁴ United Nations Global Compact. "Guiding Principles for Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework." 2011. <<https://www.unglobalcompact.org/library/2>>.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

for the commission of war crimes,” and that businesses that operate in conflict zones are especially at risk of becoming complicit in war crimes.⁴⁸ Furthermore, international law prohibits companies from benefitting from illegal activity. Article 6 of the United Nations Convention Against Transnational Organized Crime, ratified by Israel, Palestine, and the US, specifically prohibits individuals and companies from “the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime.”⁴⁹

Andrew Clapham and Scott Jerbi, former special advisors on corporate responsibility to former UN High Commissioner for Human Rights Mary Robinson, analyze the notion of corporate complicity in the specific context of conflict zones in their publication *Categories of Corporate Complicity in Human Rights Abuses*. They divide corporate complicity into three categories: direct complicity, beneficial corporate complicity, and silent complicity. Direct complicity “requires intentional participation, but, not necessarily any intention to do harm, only knowledge of foreseeable harmful effects.”⁵⁰ As such, a company “which knowingly assists a State in violating the customary international law principles contained in the Universal Declaration of Human Rights could be viewed as directly complicit in such a violation.”⁵¹ Beneficial corporate complicity describes a case in which a corporation does not directly participate, but benefits from the human rights abuses committed by a third party.⁵² Lastly, silent complicity “reflects the expectation on companies that they raise systematic or continuous

⁴⁸ International Committee of the Red Cross “Business And International Humanitarian Law: An Introduction To The Rights And Obligations Of Business Enterprises Under International Humanitarian Law” https://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf

⁴⁹ However, referring to this law may be a more controversial avenue towards justice, as absolute consensus has not been reached regarding the legality of Israel’s settlements, (A/RES/55/25).

⁵⁰ International Commission of Jurists Expert Legal Panel. Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes. Geneva: International Commission of Jurists, 2008.

⁵¹ Ibid.

⁵² Ibid

human rights abuses with the appropriate authorities. Indeed, it reflects the growing acceptance within companies that there is something culpable about failing to exercise influence in such circumstances.”⁵³ It should be noted that of these forms of complicity, direct complicity is the most likely to be successfully pursued through legal mechanisms.

Literature Review

The specific case regarding Airbnb is situated within a larger discourse working to address Israeli settlement expansion from the perspective of business and human rights. This emerging field and its corresponding normative framework offers a new approach to address Israel’s settlement enterprise, highlighted in Human Rights Watch’s recent report *Occupation, Inc. How Settlement Businesses Contribute to Israel’s Violations of Palestinian Rights*. Working within the framework of the UNGPs , the HRW report examines the role of companies that conduct business in settlements and finance settlements and settlement-related infrastructure and operations.⁵⁴ Through several case studies, the HRW report determined that settlement-related commercial activity contributes to and benefits from Israeli violations of international law, specifically as it:

“Help[s] make settlements sustainable by providing services and employment to settlers and paying taxes to settlement municipalities; depend[s] on and contribute to the unlawful confiscation of Palestinian land and resources by financing, developing, and marketing settlement homes; are inextricably linked to and benefit from Israel’s discriminatory policies that encourage settlements and harshly restrict Palestinians, such as privileged access to Israeli-issued construction permits and licenses to extract natural resources that should be used only for the benefit of the Palestinian population of the occupied territory.”⁵⁵

⁵³ Ibid

⁵⁴ Human Rights Watch. Occupation, Inc. How Settlement Businesses Contribute to Israel’s Violations of Palestinian Rights. New York: Human Rights Watch, 2016.

⁵⁵ Ibid.

The report therefore contends that “the only way settlement businesses can avoid or mitigate contributing to abuses in line with their responsibilities under the UN Guiding Principles is by ending their operations in settlements or in settlement-related commercial activity.”⁵⁶ Accordingly, *Occupation, Inc.* recommends that businesses cease any operations in or in relation to settlements or settlement-related activities.⁵⁷

Furthermore, two UN reports by the Special Rapporteur on the situation of human rights in the Palestinian Territories directly address this topic and assert that business activity that contributes to the growth of Israeli settlements is illegal.⁵⁸ In fact, A/68/376 notes that if companies directly or financially assist in the growth of settlements, they can be implicated in court for contributing to violations of international law.⁵⁹ These reports, like *Occupation, Inc.*, recommend that businesses take transparent steps to comply with the UNGPs and all relevant international law and that businesses suspend all operations that contribute to settlement activity.⁶⁰

Addressing Israel’s settlement enterprise through the emerging field of business and human rights may prove to be a more successful path to effective change than past political attempts. The hope is that if businesses begin to pull out of and speak out against settlements, Israel will be pressured—economically and politically—to change its settlement policy. As

⁵⁶ Ibid.

⁵⁷ Human Rights Watch. Occupation, Inc. How Settlement Businesses Contribute to Israel’s Violations of Palestinian Rights. New York: Human Rights Watch, 2016.

⁵⁸ The report of the Special Rapporteur on the situation of human rights in the Palestinian territories to the 67th session of the General Assembly specifically focused on businesses profiting from Israeli settlements through thirteen case studies placed within the framework of the UN Guiding Principles on Business and Human Rights. The report of the Special Rapporteur on the situation of human rights in the Palestinian territories to the 68th session of the General Assembly (A/68/376) developed the ideas of the previous report by outlining a standard for legal analysis by focusing on Dexia Group and Re/Max International, both of which conduct business in Israeli settlements.

⁵⁹ A/68/376; A/76/379

⁶⁰ A/67/379; A/68/376

mentioned, the specific case of Airbnb has not been comprehensively considered. Publicizing this case and providing strategic litigation as well as company-specific recommendations may propel this overall agenda forward.

Airbnb and the UN Guiding Principles on Business and Human Rights

In January 2016, it came to light that Airbnb was not abiding by the main tenets of the UNGPs, as the company was listing homes rentals in Israel’s West Bank settlements. At the time, it was possible that Airbnb had simply not enacted proper due diligence measures to ensure that its activity was not contributing to human rights harms—it may have been unaware that its business platform was contributing to the sustainability of Israeli settlements. However, one year later, Airbnb has been made fully aware of the situation: exposés from leading newspapers have publicized Airbnb’s presence in the West Bank, NGOs have petitioned and protested against Airbnb’s policies, and public figures have released statements and directed letters to Airbnb officials. And still, Airbnb has not altered its policies and has refused to engage with activists. As mentioned, the only statement released in response to the controversy has been a mere sentence: “This particular issue is complex: people have been debating this matter for 5,000 years, so a hospitality company from San Francisco isn’t going to have all the answers but at the end of the day, we want to help open the world, not close it off.”⁶¹ However, there is –as demonstrated—a plethora of information available to Airbnb officials regarding ethical business practice in the Occupied Palestinian Territories. Additionally, the UN Special Rapporteur for human rights in the Palestinian Territories has consistently expressed his readiness to work with businesses to assist them in maintaining responsible business practices.⁶²

⁶¹ Thomas Lee. “Airbnb stumbles yet again, this time with West Bank settlements.” [The San Francisco Chronicle](#) 10 March 2016

⁶² A/68/376; A/76/379

It should be noted that Airbnb came under fire for a separate human rights issue this year. A Harvard Business School paper titled *Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment* found that Airbnb-guests with African-American sounding names were 16% less likely to be accepted by hosts than identical guests with distinctively white names, and thus argued that the platform enables racial discrimination.⁶³ In response to this article and the criticism that it induced, Airbnb consulted lawyers, policy experts, civil rights activists, and academics in order to bring its business platform in line with its human rights responsibilities. In fact, Airbnb hired former US Attorney General Eric Holder to help devise anti-bias policies.⁶⁴ As a consequence of this undertaking, the company recently released a 32-page report outlining the steps that it plans to take in order to mitigate racial discrimination in its business design. As of November 1st, Airbnb has required all of its users to agree to a Community Commitment that states “*I agree to treat everyone in the Airbnb community—regardless of their race, religion, national origin, ethnicity, disability, sex, gender identity, sexual orientation, or age—with respect, and without judgment or bias.*”⁶⁵ Airbnb also stated a commitment to limit the prominence of user photographs, which reveal a user’s race and gender, and has hired engineers, data-scientists and researchers to its new, full-time anti-discrimination team to determine trends of host behavior in order to fight bias.⁶⁶

These actions demonstrate Airbnb’s willingness to work with the human rights community to bring its policies in line with responsible business standards. However, Airbnb’s

⁶³ Edelman, Benjamin G., Michael Luca, and Daniel Svirsky. "Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment." *American Economic Journal: Applied Economics* (forthcoming).

⁶⁴ Benner, Katie “Airbnb Adopts Rules to Fight Discrimination by Its Hosts.” New York Times 8 September 2016

⁶⁵ See: <http://blog.airbnb.com/the-airbnb-community-commitment/>

⁶⁶ Benner, Katie “Airbnb Adopts Rules to Fight Discrimination by Its Hosts.” New York Times 8 September 2016

failure to address its conduct in the West Bank provides convincing evidence that Airbnb is refusing to uphold its business responsibilities in the context of the Occupied Palestinian Territories, and—unless it acts soon—must be held accountable for its involvement in related human rights harms.

Airbnb’s Legal Liability under International Criminal Law

According to ICRC, “International humanitarian law states that not only perpetrators, but also their superiors and accomplices may be held criminally responsible for the commission of war crimes. Of these forms of commission, complicity is likely to be the most relevant to business enterprises.”⁶⁷ Aiding and abetting consists of two factors: the third party’s wrongful conduct, known as *actus reus*, and their intention or knowledge of wrongdoing, known as *mens rea*. *The Report of the International Commission of Jurists’ Expert Legal Panel on Corporate Complicity in International Crimes* describes the *actus reus* of aiding and abetting as any company involvement that brings about a substantial effect on the crime committed—a definition consistent with the International Law Commission (ILC) Code, the statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and the Nuremburg Charter.⁶⁸ In the past, this has taken the form of “the provision of goods or services used in the commission of crimes; the provision of logistical assistance to commit crimes, as well as the procurement and use of products or resources (including labor) in the knowledge that the supply of these resources involves the commission of

⁶⁷ International Committee of the Red Cross “Business And International Humanitarian Law: An Introduction To The Rights And Obligations Of Business Enterprises Under International Humanitarian Law” https://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf

⁶⁸ International Commission of Jurists Expert Legal Panel. *Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes*. Geneva: International Commission of Jurists, 2008.

crimes.”⁶⁹ The report notes that the definition of a substantial effect in the context of aiding and abetting under international criminal law has been defined by the appeals chamber of both the ICTY and ICTR as any involvement that changes the way in which a crime is carried out—it does not need to exacerbate or aggravate the harm done to be considered substantial.⁷⁰ Furthermore, the ILC commentary asserts that the assistance to the crime can occur before, during, or after the crime has been committed—the statutes of the *ad hoc* tribunals and much of their appellate jurisdiction uphold this view.

While this issue of *actus reus* is generally held as consensus, there remains controversy regarding the *mens rea* requirements necessary to prove accomplice liability. The *knowledge* standard for *mens rea* dictates that an accomplice does not need to maintain the same *mens rea* as the principle violator to be held liable, but must simply be aware that its actions assist in the commission of the crime. The *purpose* standard dictates that an accomplice must intend for the crime to take place in order to be considered liable. The *knowledge* standard is upheld in the majority of modern international case law; it is supported by the International Law Commission’s Draft Code (ILC Draft Code), numerous ICTY and ICTR judgments, as well

⁶⁹ ICTY, Brdanin, (Trial Chamber), 1 September 2004, paras. 571-583: 533. ICTY, Brdanin, (Appeals Chamber) 3 April 2007, paras. 305 – 306. ; (63 See e.g. Farben Case, p. 1187; Krupp Case, p. 1399; Flick Case, p. 1202. Also see Commissioner v. Roehling (Roehling Case), Trials of War Criminals Vol. XIV, pp. 1085-1089. (as cited in the ICJ’s Report).

⁷⁰ ICTY, Blagojevic and Jokic, (Appeals Chamber) 9 May 2007, para. 127; ICTY, Simic, (Appeals Chamber) 28 November 2006, para. 85; ICTY, Blaskic, (Appeals Chamber) 29 July 2004, paras. 45-46; ICTY, Vasiljevic, (Appeals Chamber) 25 February 2004, para. 102; ICTR, Ntagerura, (Appeals Chamber) 7 July 2006, para. 370. (as cited in the ICJ’s report).

several cases immediately following WWII.^{71,72} However, the *purpose* standard is upheld by the Rome Statute of the ICC.⁷³ Additionally, the Appeals chamber of the ICTY ruled inconsistently with previous judgments in its 2013 Perisic judgment: it stated an accomplice’s assistance must be “specifically directed” to the commission of the crime charged to amount to aiding and abetting.⁷⁴ It also stated that the accomplice must be physically present while the crime takes place—a ruling inconsistent with nearly all previous appellate jurisdiction regarding requisite *actus reus*. Just a few months later, the Special Court for Sierra Leone—which is legally required under Article 20(3) of its statute to be guided by ICTY and ICTR appellate jurisdiction—rejected this standard of “specific direction” in its 2014 Taylor ruling.⁷⁵ As international law currently stands, there is no clear legal principle regarding aiding and abetting, but there is significant evidence in support of the *knowledge* standard.

Based on the above legal framework, it is likely that Airbnb could be held liable for aiding and abetting Israel’s settlement enterprise. By enabling settlers to list their homes for rent

⁷¹ ILC Yearbook 1996, p. 18: Article 2(3)(d) ILC Draft Code, p. 21 para. 11; ILC, 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts (As cited in the ICJ’s report).; ⁷¹ ICTY, Blagojevic and Jokic, (Appeals Chamber) 9 May 2007, para. 127; ICTY, Simic, (Appeals Chamber) 28 November 2006, para. 86; ICTY, Blaskic, (Appeals Chamber) 29 July 2004, paras. 45-46; ICTY, Vasiljevic, (Appeals Chamber) 25 February 2004, para. 102; ICTY, Simic, (Appeals Chamber) 28 November 2006, para. 86; ICTY, Aleksovski (Appeals Chamber) 24 March 2000, para. 162. ; ICTY, Blaskic, (Appeals Chamber) 29 July 2004, para. 50 ICTR, Ntagerura, (Appeals Chamber) 7 July 2006; See: Zyklon B Case, Trial of Bruno Tesch; Einsatzgruppen case, the American military court

⁷² The appeals chamber of the ICTY also ruled on several occasions that in the case of crimes against humanity, an accomplice does not need to share the intent of the violator and does not need to have knowledge of the precise crime committed to be held liable, but rather must simply be aware that various crimes of a discriminatory nature were systematically occurring. See: ICTY, Aleksovski, (Appeals Chamber) 24 March 2000, para. 162; ICTY, Krnojelac, (Appeals Chamber) 17 September 2003, para. 52.

⁷³ Article 25(3) of the Rome Statute dictates that anyone who, “[f]or the purpose of facilitating the commission of such a crime, aids, abets, or otherwise assists in its commission or its attempted commission, including providing the means for its commission” is liable.

⁷⁴ *Prosecutor v Perisic* (Judgment) ICTY-04-81-A (Appeals Chamber, 28 February 2013) paras 25-44.

⁷⁵ *Prosecutor v Taylor* (Judgment) SCSL-03-01-A (Appeals Chamber, 26 September 2013), paras 467-471 (*Taylor Appeal Judgment*).

on Airbnb's platform, Airbnb provides a means of employment to settlers and tax revenue to settlement municipalities. This act aids in the maintenance and growth of illegal Israeli settlements, and thus contributes to their sustainability. Additionally, the categorization of these settlement-listings as part of Israel legitimizes Israel's claims to the land and promotes the narrative of settlements as part of Israel. Airbnb can also be held responsible for aiding and abetting the settlers: while Israeli settlers were profiting off of the Israeli occupation irrespective of Airbnb's platform, Airbnb has presented them with a new venue in which to do so. It should be noted that even though Israeli settlements would continue to prosper without Airbnb's involvement and even though Israeli settlers would find ways to rent their homes without Airbnb's platform—in line with the ILC Draft Code and numerous ICTY judgments—Airbnb's activity must simply have a substantial effect on the way that the crime is carried out in order to be considered liable. These allegations are supported by the two previously mentioned UNGA reports that assert that business operations contributing to the maintenance and growth of Israeli settlements are illegal. More directly, these allegations are supported by A/68/376 that notes that if the companies directly or financially assist in the growth of settlements, they can be implicated in court for contributing to violations of international law.

A strong case can be made that Airbnb meets the necessary *mens rea* criteria for charges of aiding and abetting, in accordance with the *knowledge* standard. As previously mentioned, Airbnb has been made aware of the situation at hand, as various newspapers, petitions, and protests have publicized Airbnb's involvement in the occupied territories. Airbnb officials maintain authority over their users and can exercise discretion regarding which listings they allow on their platform. However, they have failed to do so, as Israeli settlers continue to list their homes for rent on Airbnb's platform. Therefore, even though Airbnb officials may have had

no intention of promoting Israeli settlements, they meet the criteria set forth by the *knowledge* standard to be considered liable.

It should also be noted that in both international and national courts, the liability of a third-party is not dependent on the conviction of the principal violator. In other words, it is possible for corporate officials who facilitate gross human rights abuses to be held criminally liable while the principal perpetrators evade punishment.⁷⁶ Airbnb officials can therefore be held criminally liable for facilitating Israeli war crimes even though Israel's policy of settlement expansion has not been tried in an international or domestic court.

While Airbnb has yet to fully respond to this controversy, if faced with these allegations, Airbnb may pose several defenses. They may claim that the legality of Israeli settlements is still debated and that Israel has never been tried or convicted for establishing settlements in the West Bank. While accomplice liability is not dependent on the conviction of the principal violator, the issue at hand is not simply whether Israel has been tried but whether or not Israel's settlement enterprise constitutes war crimes. Though the majority of the international community has demonstrated consensus regarding the legality of Israel's settlements, Israel's construction of settlements has never been concretely described in a court of law as a war crime and Israel continues to assert significant legal justifications for its settlement enterprise. A court may conclude based on this lack of an absolute legal opinion that litigation against Airbnb is unjustified. However, this defense would not hold in relation to Israeli settlement-outposts—denoted as illegal by the Israeli Supreme Court.

⁷⁶ International Commission of Jurists Expert Legal Panel. Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes. Geneva: International Commission of Jurists, 2008.

In the case of Israeli settlement-outposts (or if settlements were to be officially established as a crime) Airbnb could argue that its actions do not meet the legal standards necessary to prove aiding and abetting. Airbnb lawyers could cite the ICTY Perisic judgment to claim that Airbnb officials would need to have had direct involvement in the crime in order to be held accountable as accomplices. They could therefore argue that Airbnb should be acquitted because Airbnb was physically remote from the crime and had never given specific direction to Israeli settlers to list their homes on Airbnb—nor did Airbnb ever specifically direct the creation or expansion of Israeli settlements. The case law that the court decides to deem relevant would determine whether Airbnb would be held legally accountable for aiding and abetting.

Lastly, regarding Israeli outposts, Airbnb could likely be held liable under Article 6 of the United Nations Convention Against Transnational Organized Crime, ratified by Israel, Palestine, and the US. Article 6 specifically prohibits individuals and companies against “the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime.”⁷⁷ It is unlikely that Airbnb could present a viable response to such an accusation, and it failed to answer my emails regarding this topic.⁷⁸

Jurisdictions: Where Can Airbnb Be Tried for Violations of International Criminal Law?

It has been established that Airbnb maintains responsibilities in relation to Israel’s violations of international law, and that it can be held accountable for these violations. There are various legal pathways available to enforce this accountability. Prosecutions against Airbnb can occur in international jurisdictions, such as the ICC. While the ICC cannot prosecute a company as a legal entity, it could theoretically prosecute corporate officials for involvement in

⁷⁷ A/RES/55/25

⁷⁸ For the full email, see the Appendix.

international crimes if the situation were to be referred to the ICC.⁷⁹ Prosecutions against Airbnb can also occur in a national court with a universal jurisdiction statute. A company and its officials can be held criminally liable in a national court, as most national legal systems—including the United States—incorporate corporate entities in their list of potential perpetrators. These pathways will be discussed in detail below.

International Criminal Court (ICC)

The Rome Statute of the ICC establishes the court's jurisdiction over breaches of international humanitarian law, such as the illegal establishment of settlements in occupied territory.^{80, 81} The Palestinian Authority acceded to the Rome Statute on June 13, 2014, affording the ICC legal jurisdiction over war crimes committed in the Palestinian territories.⁸² If the ICC were to open an investigation into the Palestinian territories, it is possible that corporate officials who have been benefitting from Israel's occupation of the West Banka and Gaza will be held accountable. ICC Prosecutor Fatou Bensouda opened a preliminary examination into the settlement enterprise (as well as war crimes related to the 2014 Israel-Gaza war) in January

⁷⁹ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998

⁸⁰ The ICC is a court of last resort, governed by the principle of complementarity: the ICC has jurisdiction to take a case when a state is unwilling or unable to hear a case, or if a state's trials are merely show trials. An investigation by the ICC can be triggered in three ways. A state party to the Rome Statute can refer its own country situation to the court, the ICC Prosecutor can decide on her own to hear a case, and the Security Council can refer any country situation to the court, even if the country is not a member to the court.

⁸¹ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998

⁸² It should be noted that the Israeli government contests the legal legitimacy of the ICC's ability to adjudicate in the OPT

2015.⁸³ Two years have passed and Bensouda is yet to order a full criminal investigation, but some scholars have predicted that UNSC Resolution 2334 may render an investigation more likely in the near future.^{84, 85} Additionally, the recent threatened withdrawal of several African countries from the ICC on account of accusations that it is overly focused on Africa may encourage Bensouda to open this investigation.⁸⁶

However, as mentioned, the Rome statute of the ICC upholds a *purpose* standard for *mens rea*; an accomplice is liable if “for the purpose of facilitating the commission of a crime, the person aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.”⁸⁷ There is no existent case law to which to refer in order to determine how the courts will assess the requisite mental state of an accomplice, but the *ICJ Expert Legal Panel* argues that “if it is established that a corporate official had knowledge that an act would facilitate the commission of a crime, and yet proceeded to act, then the purpose to facilitate could be found to exist. The fact that the official knowingly aided a crime in order to make a profit does not diminish his assistance; indeed it could be interpreted as providing a further incentive to facilitate the crime ‘on purpose.’”⁸⁸

⁸³ Khoury, Jack “Palestinian Authority Presents Claims Against Israel to International Criminal Court” Ha’aretz 20 March 2016

⁸⁴ However, while UNSC Resolution 2334 reaffirmed that settlements are illegal, it termed the settlements a “flagrant” violation and not a “grave” violation of international humanitarian law, leaving the question of war crimes undetermined

⁸⁵ Bob, Yonah “Will the UN resolution bring down a full ICC war crimes probe on Israel?” Jerusalem Post 26 December 2016

⁸⁶ Trigt, Van E. “Africa and Withdrawal from the ICC” Peace Palace Library 28 October 2016

⁸⁷ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998

⁸⁸ International Commission of Jurists Expert Legal Panel. Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes. Geneva: International Commission of Jurists, 2008.

While this possibility warrants mention, the prospect of it occurring remain low. In light of the complexity and prominence of this conflict, the possibility of holding corporations accountable seems to pale in comparison to the other allegations that will likely ensue. As such, while it is possible, it remains improbable that Airbnb officials would be prosecuted in the ICC for complicity in Israel's war crimes. Alternative jurisdictions provide more promising potential for holding Airbnb officials accountable.

Courts with Universal Jurisdiction Statutes

Universal jurisdiction (UJ) applies international criminal law to the local level by affording domestic courts the jurisdiction to prosecute foreign individuals for crimes under international law that are universally condemned, such as crimes against humanity, war crimes, genocide, and torture. Universal jurisdiction aims to hold state officials accountable for crimes when they would otherwise remain immune to punishment in their own countries. It is grounded in the concept of *erga omnes* obligations and based on the principle of *jus cogens*—certain obligations under international law are binding on all states. In other words, universal jurisdiction dictates that certain crimes are so extreme that they amount to crimes against the international community at large, and perpetrators of these crimes must be held accountable.

Countries with broad universal jurisdiction statutes can invoke universal jurisdiction to prosecute Airbnb for complicity in Israeli human rights violations. While courts may choose to invoke the principle of complementarity and *forum non-convenes*—they may argue that Israeli courts are more appropriate venues for this prosecution—the history of inadequate legal redress

for Palestinians in Israel renders this argument less convincing.⁸⁹ As such, countries with broad universal jurisdiction statutes that have vocally supported Palestinian rights in the past may be willing to prosecute a case against Airbnb. Finland and the United Kingdom are two notable examples.

Chapter 1, Section 7 of the Finish Penal Code authorizes Finish courts to exercise jurisdiction over a wide range of crimes committed abroad, such as war crimes and crimes against humanity, without any presence or nexus requirement.^{90, 91} Finland also demonstrated support for the Palestinian cause when it supported GA Resolution 67/19 that afforded Palestine ‘Non-Member Observer State’ status in the UN. At the assembly, Finland’s UN representative Mr. Viinanen affirmed:

“[Finland] voted in favour of resolution 67/19 with the aim of strengthening prospects for a Palestinian State and showing support for the moderate forces that are committed to pursuing that objective through negotiations... Finland will continue to contribute to building the future institutions of a sovereign State of Palestine.”⁹²

Additionally, prosecuting Airbnb would align with Finland’s commitment to business and human rights initiatives, as demonstrated through its promotion of the Global Compact Nordic

⁸⁹ “Obstacles to justice and redress for Palestinian victims : joint statement issued by Palestinian, Israeli and Int’l NGOs.” FIDH Worldwide Movement for Human Rights 26 April 2013

⁹⁰ Decree on the application of Chapter 1, section 7 of the Criminal Code (627/1996) Section 1 deems the following international offences applicable: “a crime against humanity, aggravated crime against humanity, war crime and aggravated war crime defined in the Charter of Rome of the International Criminal Court (Treaties of Finland 56/2002) or other corresponding punishable criminal act which should be deemed a grave breach of the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Relative to the Treatment of Prisoners of War, and Relative to the Protection of Civilian Persons in Time of War (Treaties of Finland 8/1955), as well as the Protocol Additional to the Geneva Conventions, and relating to the protection of victims of international armed conflicts” (Treaties of Finland 82/1980), (286/2008)

⁹¹ Finish Penal Code Chapter 1, Section 6(3)(b) (as cited in Universal Jurisdiction in the European Union)

⁹² A/RES/67/19

Network.⁹³ Overall, the presence of a broad universal jurisdiction statute, paired with the political will to vocally support Palestinian rights and a commitment to corporate social responsibility renders the likelihood of a case against Airbnb in Finnish courts feasible.

The United Kingdom also presents an avenue to prosecute Airbnb through universal jurisdiction. The United Kingdom's International Criminal Court Act of 2001—amended in 2009—allows the UK to exercise universal jurisdiction over crimes committed outside of the UK by non-UK citizens, such as Israel's grave breaches of the Geneva Conventions. It should be noted that the accused must be present in the UK in order to initiate a prosecution—a stipulation met on account of Airbnb's London office.⁹⁴

The UK is a particularly appealing option, as it has historically called upon its UJ statute to prosecute individuals guilty of grave human rights violations, such as Nazi collaborator Anthony Sawonuk, Afghan warlord Faryadi Sarwar Zardad, and Chilean dictator Augusto Pinochet. However, recent controversy regarding UJ-prosecution of Israelis in the UK may complicate this option. In December 2009 a London court issued an arrest warrant for Tzipi Livni regarding alleged war crimes committed by the IDF during Operation Cast Lead, Israel's operation in the 2008 Israel-Gaza conflict. The threat of arrest made her refrain from travelling, and the court revoked the arrest warrant two days later. Similarly, a team of senior IDF soldiers cancelled a trip to the UK due to fears that arrest warrants would be sought regarding alleged war crimes.⁹⁵ In an attempt not to deteriorate relations between the UK and Israel, the UK passed a

⁹³ See Finland's letter of commitment:

https://www.unglobalcompact.org/system/commitment_letters/7445/original/Global_Compact_Join_Letter_9052.pdf?1262613791

⁹⁴ Corporate entities can be held criminally liable in the UK based on the identification principle: "The person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company." Lord Reid, See: *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153

⁹⁵ Crilly, Rob. "Israeli military cancels trip to Britain over arrest fears" [The Telegraph](#) 05 January 2010

law in 2011 granting immunity to all Israelis traveling to the UK on official visits. It also required that as of 2011, consent must be obtained from the Director of Public Prosecutions, Alison Saunders, in order for an arrest warrant to be issued.⁹⁶ Due to this history, the UK may refrain from exercising its jurisdiction due to political reasons. However, it remains quite possible that the UK would prosecute Airbnb for involvement in Ma'ale Rehavam, the Israeli outpost where Airbnb is active, as the concrete illegality of outposts renders the topic less political.

While a court could invoke the principle of *forum non conveniens* and argue that Israel is a more appropriate jurisdiction to hear this case, this argument is suspect.⁹⁷ Firstly, Israeli courts have continuously declined to rule on the legality of Israeli settlements.⁹⁸ Secondly, several Israeli laws set a precedent that Israeli courts would not be a realistic venue to hold a corporation accountable for conducting business in the settlements or in settlement-outposts. The July 2011 Israeli Anti Boycott Law makes it a civil offense to “deliberately avoid economic, cultural or academic ties with another person or body solely because of their affinity with the State of Israel, one of its institutions or an area under its control, in such a way that may cause economic, cultural or academic damage.”⁹⁹ Israeli authorities can also deny benefits to those that have participated in a boycott or publicized a call to boycott.¹⁰⁰ The law was legally challenged as unconstitutional, but the majority of judges rejected the appeal and held that the law was a legitimate means to protect Israel from political terrorism. As such, restricting Airbnb from

⁹⁶ Paul, Jonny “UK amends law to protect Israelis from prosecution” Jerusalem Post 15 September 2011

⁹⁷ Forum non conveniens is a legal principle that allows courts to dismiss a case if another forum is better suited to hear the case

⁹⁸ Bargil v. Government of Israel, HCJ 4481/91

⁹⁹ Law Preventing Harm to the State of Israel by Means of Boycott (Reshumot Sefer Huqim, pp. 972, 973, 13 July 2011)

¹⁰⁰ Ibid.

conducting business in Israeli settlements or Israeli settlement-outposts would likely be ruled unlawful under the Israeli Anti Boycott Law.¹⁰¹

Furthermore, Israel's parliament preliminarily approved a bill in November 2016 to retroactively legalize dozens of outposts, and while the Attorney General stated that he would work to fight it in the Supreme Court, the potential for success is tenuous.¹⁰² In fact, Israel's High Court of Justice is currently struggling to maintain power in the face of a highly conservative legislature; the Knesset has proposed several laws that would limit the power of the Supreme Court and might allow the Knesset to circumvent rulings of Israel's HCJ. Public spats between Ayelet Shaked, the Minister of Justice, and Miriam Naor, the Chief Justice have been prevalent throughout Israeli media, and Tzipi Livni recently noted that "Shaked drew a sword and plunged it into the court."¹⁰³ In light of these factors, the principle of *forum non conveniens* would likely not render Israel the appropriate jurisdiction to hear such a case.

US Civil Courts: The Alien Tort Claims Act

There are some instances in which civil claims can be brought to an extraterritorial national court through universal jurisdiction. The Alien Tort Claims Act (ATCA) is likely the most relevant of such instances and may provide an avenue to hold Airbnb accountable for a civil offense in US courts. ATCA, part of the US Judiciary Act of 1789, states "the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." The law remained dormant for about two centuries, but

¹⁰¹ Times of Israel Staff "High Court rejects appeal against anti-boycott law" [Times of Israel](#) 16 April 2015

¹⁰² Heller, Jeffery "Bill to legalize settler-outposts advances in Israeli legislature" [Reuters](#) 16 November 2016

¹⁰³ Caspit, Ben "Will Israel limit the power of its own Supreme Court?" [Al Monitor](#) 6 April 2016

was rediscovered by international human rights lawyers in the 1980s—some human rights norms were protected under the statute, as they had become a reality of international law by the twentieth century. As such, the Supreme Court interpreted this statute to allow non-Americans to file claims and seek remedy in US courts for human rights violations committed outside of the US.¹⁰⁴ In the mid-1990s, cases under the Alien Torts Statute proliferated, as plaintiffs began to file claims not only against those directly perpetrating human rights violations but also against multinational corporations that were complicit in human rights violations.¹⁰⁵ However, the statute was significantly limited in 2013 by the Supreme Court’s decision in *Kiobel v. Royal Dutch Petroleum*, when the court unanimously concluded that the plaintiff’s charges could not be recognized as it was brought by aliens against foreign nationals for complicity in human rights abuses that occurred on foreign soil.¹⁰⁶ While many considered this to be the concluding limitation on ATCA that would make its use in human rights cases obsolete, the distinction made in Chief Justice Roberts’ conclusion, and elaborated upon in Justice Breyer’s concurring opinion, is noteworthy. Justice Roberts bars the *Kiobel* case by applying a presumption against extraterritoriality. He notes that a case can only be heard through ATCA if it “touches and concerns” the US “with sufficient force to displace the presumption against extraterritorial application.”¹⁰⁷ Justice Breyer (joined by Justices Ginsburg, Sotomayer, and Kagan) used this window to emphasize support for extending jurisdiction of ATCA in certain cases. Specifically, he explains that the court could extend jurisdiction “where (1) the alleged tort occurs on American soil, (2) the defendant is an American national, or (3) the defendant’s conduct

¹⁰⁴ “*Filartiga v. Pena-Irala*” “*Sosa v. Alvarez-Machain*”

¹⁰⁵ “*Doe v. Unocal*” “*Wiwa v. Shell*”

¹⁰⁶ “*Kiobel v. Royal Dutch Petroleum*” 569 US_(2013)

¹⁰⁷ *Ibid.*

substantially and adversely affects an important American national interest.”¹⁰⁸ Such an approach would presumably allow for claims to be brought under ATCA against US corporations—as the defendants would be by definition American nationals—even if the human rights violation were to occur on foreign soil.¹⁰⁹ While no claim has successfully been brought under ATCA since this decision, this distinction may create a window for future ATCA litigation, and may consequently present a viable path for holding Airbnb accountable.

It should be noted that US courts, like international courts, have been inconsistent regarding the *mens rea* requirement for aiding and abetting under ATCA. In *Doe v. Unocal*, it simply needed to be shown that the defendant lent “*knowing* practical assistance, encouragement or moral support” to the crime to prove accomplice liability.¹¹⁰ On the other hand, in *Khulumani v Barclays Bank and Others*, it needed to be shown that the defendant assisted the crime “with the purpose of facilitating the commission of that crime.”¹¹¹ If a court were to admit this case under ATCA, its decision regarding the *mens rea* standard would play a key role in determining Airbnb’s liability.

However, even if the obstacles presented in *Kiobel* were to be overcome, the likelihood of a court hearing this case may remain questionable. Noura Erakat explains in her essay *Litigating the Arab-Israeli Conflict: The Politicization of U.S. Federal Courtrooms*, that while ATCA cases were proliferating as a means of seeking redress for violations of international

¹⁰⁸ Ibid.

¹⁰⁹ It is unclear whether ATCA could prosecute Airbnb itself, as state actors and individuals—not corporations—are the traditional subject of international law. Recent texts, such as the Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights, may imply that businesses are obligated to make reparations for harms caused by breaches of international law

¹¹⁰ “Doe v. Unocal”

¹¹¹ “Khulumani v. Barclay National Bank Ltd.”

human rights law, Palestinians were continuously unable to find judicial redress in US courts.¹¹² For example, the case of *Rachel Corrie v. Catterpillar*, in which several Palestinians and the family of a deceased US activist brought claims against Caterpillar, Inc. for aiding and abetting Israeli war crimes, the 9th circuit court of appeals invoked the *political question doctrine* to dismiss the case.¹¹³ Erakat points to a trend of US courts evading decisions regarding this politically charged issue, and argues, “the politicization of cases involving the Arab-Israeli conflict and critical of Israeli occupation policies is indicative of the interlocking relationship between law and politics...”¹¹⁴ In fact, this trend is apparent in Canadian courts as well. In the case of *Bil’in Village Council v. Green Park International*, Canadian courts stated that corporations are obligated to avoid participating—even indirectly—in Israel’s breaches of the Geneva Conventions, yet the court ceded deference to Israeli courts on the grounds of *forum non conveniens*.¹¹⁵

Overall, ATCA offers a possible approach of seeking justice through tort claims, yet ATCA’s recent gutting in *Kiobel* paired with the tendency of US courts to avoid rulings that are critical of Israel’s occupation renders the success of this approach dubious. Nevertheless, the strategy of approaching the prosecution of Airbnb through a civil court may prove key in holding Airbnb accountable, and will be discussed further in the next section.

Airbnb’s Legal Liability under the Law of Civil Remedies

¹¹² Erakat, Nourra. *Litigating the Arab-Israeli Conflict: The Politicization of US Federal Courtrooms* (2009). 2 *Berkeley Journal of Middle Eastern and Islamic Law* 27 (2009).

¹¹³ The political question doctrine refers to the procedure of courts refusing to hear a case if it deals directly with issues that are of the sole responsibility of other branches of government – namely the executive branch’s control over foreign relations

¹¹⁴ *ibid*

¹¹⁵ *Bil’in Village Council v. Green Park International*

While complicity in serious violations of human rights and humanitarian law are generally associated with criminal liability, civil liability—as discussed in regards to ATCA—may prove to be a more practical, and in some cases advantageous, avenue to achieve legal remedy.¹¹⁶ Firstly, criminal law often only recognizes the legal liability of natural persons, whereas the law of civil remedies recognizes both natural and legal persons. In other words, unlike criminal law, company entities can always be held liable under the law of civil remedies.¹¹⁷ Secondly, if civil actions are brought against Airbnb and a court awards remedy (material compensation) to the affected Palestinians, this could have a significant impact on the lives of these Palestinians and could induce a change in corporate culture by raising expectations regarding acceptable corporate conduct in the Palestinian territories.¹¹⁸ This could, in turn, deter other companies from conducting business in Israeli settlements in the future. Third, the law of civil remedies does not require the involvement of state prosecutors or state authorities throughout the proceedings; victims or their representatives can initiate a judicial inquiry against companies themselves.¹¹⁹ As discussed, states may be reluctant to become involved in criminal proceedings against Airbnb officials due to the politically charged nature of this case. A civil liabilities case may therefore prove more fruitful, as it would allow Palestinians themselves to file claims for Airbnb’s alleged complicity.¹²⁰ Fourth, in every jurisdiction, the law of tort and the law of non-contractual obligations protect a victim’s “interests” –life, liberty, dignity, mental and physical integrity, and property—rendering civil liability a viable legal avenue for cases regarding human rights

¹¹⁶ The law of civil remedies refers to the Tort Law in common law legal systems and the law of non contractual obligations in civil law jurisdictions.

¹¹⁷ Corporate civil liability for violations of international humanitarian law”, *International Review of the Red Cross*, vol. 88. No. 863, September 2006

¹¹⁸ It should be noted that some criminal legal systems do not offer the possibility of monetary compensation to victims of grave human rights abuses, while all civil legal systems enable this possibility

¹¹⁹ *Ibid.*

¹²⁰ Some countries lack mechanisms for victims to initiate criminal proceedings

violations.¹²¹ Fifth, throughout civil-law jurisdictions, civil liability can be brought against any actor whose behavior contributes to a harm suffered by another—it is irrelevant whether the accused instigated the situation in which the harm occurred, actively inflicted the harm, or assisted a principle perpetrator.¹²² Furthermore, in the United States, “not only can a natural or legal person be held generally liable in tort law without specification of the role they played in causing the harm, in some instances they can also be held specifically liable for “aiding and abetting“ a tort.”¹²³ Lastly, while the standard for a decision in a criminal trial is the existence of evidence beyond a reasonable doubt, a preponderance of evidence is sufficient to declare a guilty verdict in a civil case. A civil court may therefore offer an easier and more advantageous path to hold Airbnb liable.

Legal Framework: Third Party Liability under the Law of Civil Remedies

According to the *Report of the International Commission of Jurists’ Expert Legal Panel on Corporate Complicity in International Crimes*, a company can be held responsible under civil law if it causes harm to a victim through negligent or intentional conduct. More specifically, a company or corporate official can be held liable if 1) harm was inflicted to a victim’s interest that is protected by law 2) the company’s behavior contributed to the infliction of that harm 3) the company knew or should have known due to available evidence that its behavior posed a risk of harm to the victim (i.e. intention or negligence), and 4) the company failed to take the

¹²¹ Ibid.

¹²² International Commission of Jurists Expert Legal Panel. Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes. Geneva: International Commission of Jurists, 2008.

¹²³ See: US Restatement of the Law, 2nd, Torts

precautionary measures it should have in order to prevent the risk from transpiring.¹²⁴ The facts and considerations will vary in each legal jurisdiction, but generally speaking, these are the key considerations.¹²⁵

The liability of the company will typically be judged based on the foreseeability of risk and the extent of precautionary measures put in place by a company to mitigate risk. A causal nexus must be established between the company's conduct and the harm suffered to be considered liable—it does not need to constitute the main cause, but must have a place in the chain of causation. For example, if a company's conduct could contribute to the perpetration of a gross human rights abuse or if a company could reasonably foresee that its conduct risks contributing to a particular harm to an interest but fails to act, then it could be held liable. In US law in particular, joint and several liability for a tort occurs when a person or entity “orders or induces the conduct, if he knows or should know of circumstances that would make the conduct tortious if it were his own, or (b) conducts an activity with the aid of another and is negligent in employing him, or (c) permits the other to act upon his premises or with his instrumentalities knowing or having reason to know that the other is acting or will act tortiously.”¹²⁶ Furthermore, in some instances US law allows for a natural or legal person to be held liable for aiding and

¹²⁴ International Commission of Jurists Expert Legal Panel. Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes. Geneva: International Commission of Jurists, 2008.

¹²⁵ The Panel notes, “In every jurisdiction, despite differences in terminology and approach, an actor can be held liable under the law of civil remedies if through negligent or intentional conduct it causes harm to someone else. Across a range of jurisdictions, this is referred to as fault liability. ...Most jurisdictions also include rules of strict (no fault) liability in relation to specific types of activity or damage under which someone can be liable even if their conduct was not negligent or intentional. An example is the vicarious liability of the employer for the damage his or her employee causes to a third party.”

¹²⁶ Restatement (Second) of Torts 877 (1965), cited in Corporate civil liability for violations of international humanitarian law”, International Review of the Red Cross, vol. 88. No. 863, September 2006

abetting a tort.¹²⁷ Lastly, California state law authorizes tort violations to be classified not only as intentional or negligent acts, but also as reckless misconduct, defined as “despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others”; or: “despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.” When reckless misconduct is applied in place of negligence, plaintiffs are awarded large compensation, often in the form of punitive damages.¹²⁸

Based on the above legal framework, Airbnb can be held liable for violating Palestinian rights. As discussed, the establishment, maintenance, and growth of settlements violates the right to non-discrimination and equality before the law, right to liberty and security of person, and right to an adequate standard of living of the estimated 300,000 Palestinians living in Area C of the West Bank. By financially assisting in the growth of settlements—and by legitimizing their existence—Airbnb contributes to the infliction of these human rights harms.¹²⁹ Airbnb can thus be understood as constituting a place in the chain of causation of the harm. Additionally, as discussed, Airbnb has adequate knowledge that its conduct poses a risk of harm to the Palestinian population, yet it continues to fail to take any precautionary measures to mitigate harm. The way in which the court determines how a reasonable entity in Airbnb’s circumstances would have acted will determine the outcome. Whether a “reasonable member” is defined to the lowest common denominator or whether they are held to the standards of a responsible member of society would be up to the leanings of the court.

¹²⁷ International Commission of Jurists Expert Legal Panel. Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes. Geneva: International Commission of Jurists, 2008.

¹²⁸ California Civil Code § 3294

¹²⁹ However, it should be noted that concretely proving Airbnb’s contribution to harm may be challenging and Airbnb’s defense could make an argument that they were not truly participants in the chain of causation of the harm.

Typically, a civil remedies lawsuit would have to take place in the country where the harm occurred. However, due to the globalized nature of multinational corporations, victims can sometimes seek justice in courts apart from where the harm took place, especially if obstacles exist in their own jurisdiction preventing them from seeking justice. As it has been demonstrated that Palestinians face significant obstacles seeking justice in Israeli courts, US courts would likely admit the case, as Airbnb—the defendant—is headquartered in the US. This is based on the international private law principle of *actor sequitur forum rei*, which holds that a claimant should initiate legal proceedings in the court of the defendant’s area of residence, even if the wrong took place elsewhere.^{130, 131} Additionally, if one accepts that there is a customary international law obligation to make reparations for violations of international law, then it can be argued that the US is obligated to hear this case as Palestinians cannot otherwise receive reparations due to the political situation in Israel.¹³² Additionally, filing this lawsuit in California, Airbnb’s state of residence, may be advantageous to Palestinian rights, because if the court were to hear the case and decide that Airbnb’s actions amount not only to negligence but also to reckless misconduct, Palestinians could be entitled to a large damage award. However, given the long history of US support for Israel, it is possible that a US court would decline to hear the case by invoking *forum non conveniens*, the *non-justiciable political question* doctrine, or *act of state* doctrine.¹³³ That said, a strong argument exists for US courts to hear this case.

¹³⁰ Roosevelt, Kermit. Conflict of Laws. Foundation Press, 2009.

¹³¹ Plaintiffs would have the option of suing Airbnb in a federal court (based on diversity jurisdiction) or in a California court, where Airbnb is based.

¹³² The UNGA’s 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation are highly authoritative, though not binding; ICCPR, ratified by the US, obligates states parties to ensure that victims of violations of the rights and freedoms protected by the Covenant have access to effective remedy...Additionally, Articles 2 and 6 CERD; Article 2 CRC; Article 2, CEDAW; Articles 1 and 25 ACHR; Article 1 ECHR all ensure a right to effective remedy.

¹³³ An act of state doctrine refers to the US legal principle that every sovereign state must respect the independence of every other sovereign state, and US courts cannot judge the way another government

The international private law principle of *lex loci delicti* typically dictates that the law of the territory where the wrong was committed applies.¹³⁴ However, United States courts have historically been flexible in determining which law to apply. As such, the applicable law would depend on the court's considerations—Israeli law, Israeli military law, US federal law, or California State law might apply. However, it is highly unlikely that a court would apply Israeli military law to the case, as doing so would transfer the discrimination faced by Palestinians in Area C of the West Bank to US courts. It is also unlikely that a court would apply Israeli civil law to the case, as it does not apply to those harmed (the Palestinians) nor does it apply to the territory where the harm occurred—though such a prospect is possible. An in depth discussion of each set of laws will not be explored here, but both Israeli law, US federal law, and California state law are democratic in nature and ensure dignity and liberty for its citizens, so the choice of law would likely not make a material difference in the case.

While civil law proves fruitful as a strategy to hold Airbnb liable for complicity in human rights harms, it also can be used to address non-criminal issues. These will be discussed in the next section.

Civil Liabilities for Corporate Transgressions

False advertisement

acts within its own territory—if a court were to hold Airbnb liable for aiding in the infliction of harm to Palestinians, it could be understood as denouncing Israel's treatment of Palestinians in Area C.

¹³⁴ International Commission of Jurists Expert Legal Panel. Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes. Geneva: International Commission of Jurists, 2008.

Airbnb can be held accountable under US Civil Law for false advertisement. The US Federal Trade Commission (FTC) defines false advertisement as “the use of false or misleading statements when promoting a product. It may include misrepresentation of the product at hand, which may negatively affect many stakeholders, especially consumers.”¹³⁵ Airbnb’s listings in West Bank settlements fail to mention that the properties are in disputed, if not illegal territory. The Green Line separating the West Bank from Israel-proper is denoted by a vague dotted line, and dozens of listings in Israeli settlements—to the east of the Green Line—are denoted as

within the State of Israel, as illustrated in Figure 2. Such a depiction

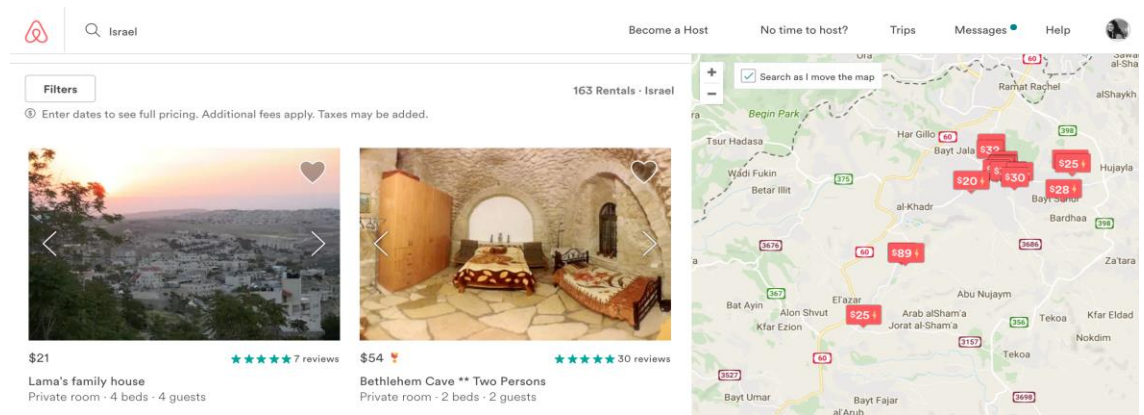


Figure 2: A search for of Airbnb listings in Israel displays numerous listings in the West Bank, screenshot taken on December 17, 2016

inadvertently recognizes Israel’s claim to the land. Additionally, a search for rentals in the Jerusalem area generates listings of some options in nearby settlements beyond the Green Line, and the website’s map of the West Bank does not distinguish between Israeli settlements and Palestinian towns.¹³⁶ This ambiguity creates a situation in which Airbnb guests are not afforded the information necessary to make an informed decision regarding their consumer activity. As Alexei Folger, Jewish Voice for Peace protest coordinator and volunteer noted, “If you’re not

¹³⁵ See: <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-faqs-guide-small-business>

¹³⁶ Brown, Kristen “How Airbnb, Google, and Microsoft view disputed territories differently” Fusion 10 February 2016

that familiar with geography you could pick a place that looks close to Jerusalem ... and it says Israel, and you book it and then when you go through the checkpoint at the entrance you discover you're in a settlement."¹³⁷ In other words, Airbnb users may unknowingly book a rental without realizing that doing so will lend economic and political support to Israeli settlements. Additionally, they might not know until arrival that their rental entails the safety risks associated with entering a military zone and passing through military checkpoints.

The locations of Airbnb listings are determined through Google Maps. However, Google Maps does not denote a country affiliation for addresses in the West Bank, so it is assumed that Airbnb hosts themselves are denoting their settlement listings as within Israel (Airbnb hosts are able to make changes to the location of their listings).¹³⁸ Airbnb responded to this issue in an emailed Statement to *Fusion* writer Kristen Brown, in which it placed the onus on their users to uphold standards of fair advertisement: "[listings are] based on trust and we depend on hosts and guests to be transparent with one another."¹³⁹ Yet Airbnb's practice of allowing its own users to manipulate geographic labels effectively allows these border disputes to be digitally contested on its platform and makes Airbnb users unknowingly involved in the dispute. This is true in the context of Israel/Palestine, but also in other disputed regions: numerous listings in Jammu and Kashmir are labeled as within Pakistan, and listings throughout Moroccan-claimed Western Sahara are listed as within Morocco.¹⁴⁰

¹³⁷ Norton, Ben "Airbnb profits off stolen homes": 140,000 people, peace groups call to stop rentals in illegal Israeli settlements" Salon 11 March 2016

¹³⁸ Ibid.

¹³⁹Brown, Kristen "How Airbnb, Google, and Microsoft view disputed territories differently" *Fusion* 10 February 2016

¹⁴⁰ Ibid.

Additionally, the fact that Google Maps is used to determine location is problematic in itself. Google Maps claims that it works to “represent the ‘ground truth’ as accurately and naturally” as possible, yet the way in which it gets around these issues is

controversial: it displays different ground-truths in different locations in order to appease both countries.

¹⁴¹ For example, the borders of Arunachal Pradesh appear significantly different when searching through Google Maps on a Chinese and Indian web browser, as displayed in Figure 3 and 4.

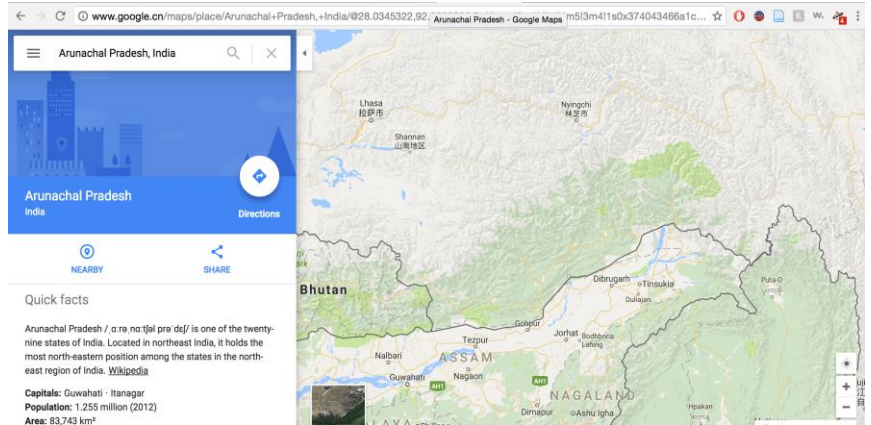


Figure 3: Arunachal Pradesh from Google Maps China

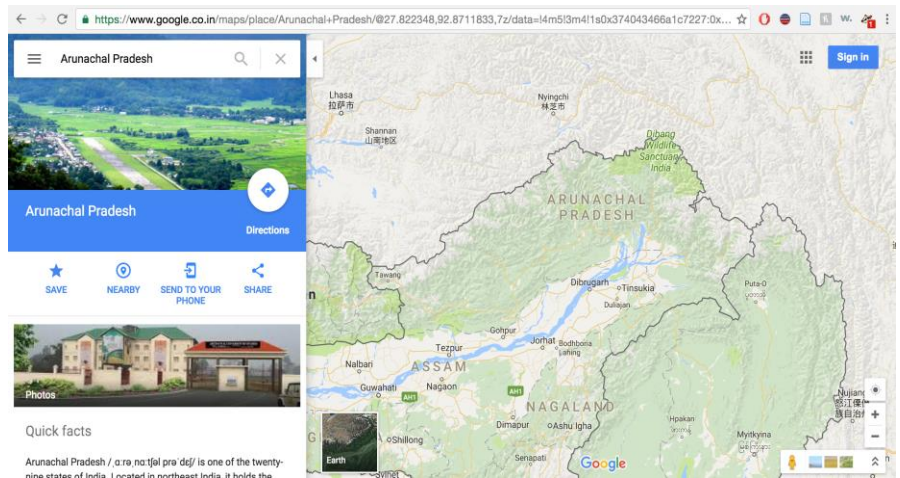


Figure 4: Arunachal Pradesh from Google Maps India

¹⁴¹ Google Maps’ policy: “Our goal is to provide the most legible and accurate maps we can given the information available in these oft-changing areas of geopolitical disagreement. Like most maps, ours include symbology that makes borders and other geopolitical features clearer to users. For example, we employ various boundary styles in Google Earth and Maps to clarify the current status of boundary lines, viewable [here](https://maps.googleblog.com/2010/07/improving-quality-of-borders-in-google.html) in the Help Center.” See: <https://maps.googleblog.com/2010/07/improving-quality-of-borders-in-google.html>

As Airbnb's maps are a function of Google Maps, Airbnb users will inevitably see different maps and borders depending on their location. Figure 4 and Figure 5 demonstrate

this in regards to

Arunachal Pradesh.

Airbnb Users in India

may book listings and

unknowingly book in

territory that China

claims as its own, and

vice versa. Therefore, even if Airbnb were to bar its users from manually plugging in country

locations, strictly relying on Google Maps would not protect users from unknowingly making

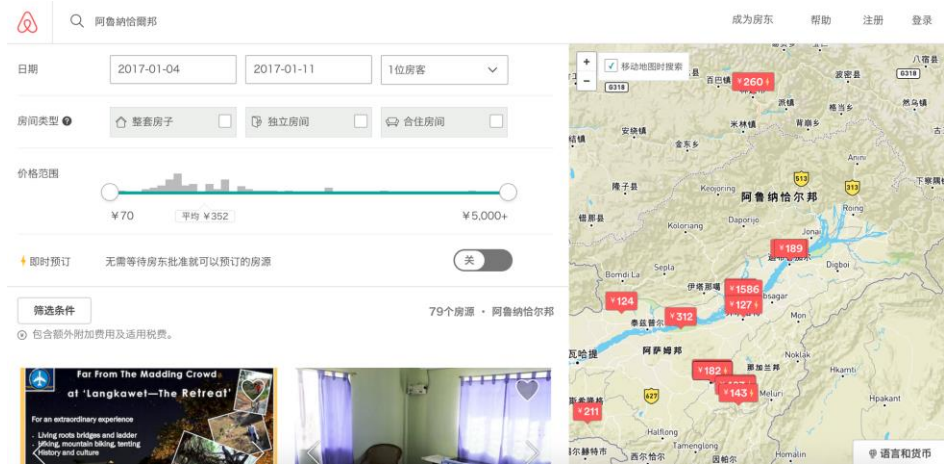


Figure 6: Airbnb's listing of Arunachal Pradesh from China

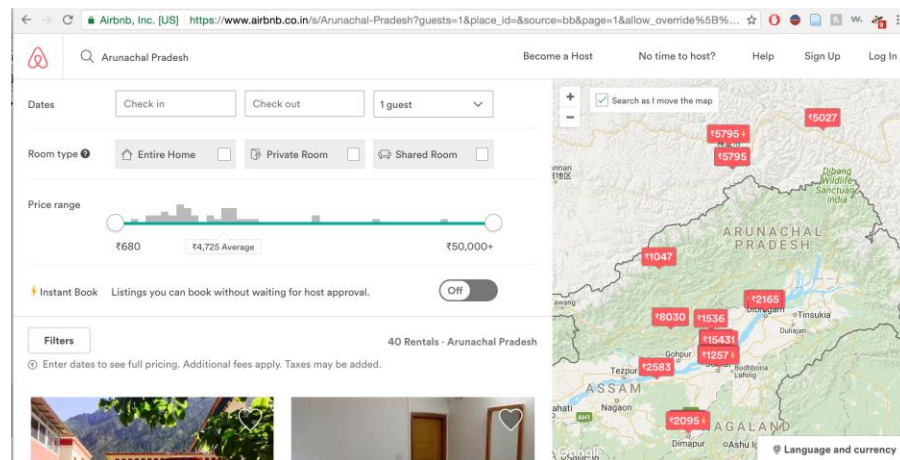


Figure 5: Airbnb's listing of Arunachal Pradesh from India

bookings in disputed

territories. It should be

noted that this particular

issue is not directly

relevant to Israel-

Palestine because there is

no Google Palestine nor

does Google provide the West

Bank with a country affiliation; Israel and the West Bank are consistently displayed as a network

of porous boundaries. Yet, the representation of borders from different country browsers is

relevant to the issue of disputed territories at large and could easily arise in the prospect of a future Palestinian state.

It should also be noted that this issue of cartography and labeling is not trivial—it is not simply about tourists finding themselves in unforeseen locations. When Airbnb inadvertently recognizes Israel’s claims to the land by labeling settlements as being in Israel, genuine consequences can ensue. In fact, in 2010 Google Maps almost caused a border war between Nicaragua and Costa Rica: Nicaraguan official Eden Pastora ordered fifty Nicaraguan soldiers to cross the border into Costa Rica and claim the territory, pointing to Google Maps as evidence that it was in fact Nicaraguan territory. Google Maps soon acknowledged the mistake in their map and corrected the border, but Pastora refused to remove his troops for weeks, reigniting an age-old border dispute between Nicaragua and Costa Rica.¹⁴² Similarly, in September 2015, it was discovered that Google maps had been designating Spanish names to addresses in the Essequibo Coast, a Venezuela-claimed Guyanan town, re-igniting age-old tensions between the Anglophone and Hispanophone countries. Suffice to say, a technology company’s decision regarding where it should place and how it should label borders can have unexpectedly significant implications.

Airbnb—and Google Maps—could look to Microsoft Bing as an example of a company that has adopted responsible cartographic practices. Not only does it represent disputed territories through dotted lines, multiple claim lines, and multiple names, but it has also adopted a holistic Cartographic Policy:

“Microsoft recognizes that diverse and sometimes conflicting views of geography exist in the world. We seek to remain as neutral as possible while providing accurate and informative mapping products...In dealing with disputed areas, our cartographers strive for detailed and neutral depictions and to try present differing points of view where appropriate.”¹⁴³

¹⁴² Jacobs, Frank “The First Google Maps War” New York Times 28 February 2012

¹⁴³ See: <https://www.microsoft.com/en-us/TwC/global-readiness.aspx>

The site explains that in situations of geographic uncertainty, Microsoft respects the decisions of the ICJ where available, otherwise it “weigh[s] the practices and opinions of United Nations bodies, the International Organization for Standardization, regional political organizations, and independent academic and research organizations to determine if a significant international consensus exists.”¹⁴⁴ In the absence of any significant consensus, Microsoft will depict the region as disputed. If Airbnb were to adopt similar policies, it could avoid significant controversy.

If Airbnb does not adopt new policies on its own, it could likely face allegations, as Airbnb’s actions could easily amount to false advertisement. However, suing Airbnb through a class action lawsuit would likely prove difficult, because users must agree to Airbnb’s Terms of Service stipulating that Airbnb offers no guarantees regarding the accuracy of host’s listings. Additionally, US citizens would be barred from bringing a suit, as within the US users must accept an arbitration clause that includes a class-action waiver and an agreement to default to a dispute resolution process in the event of a grievance.¹⁴⁵ However, it is possible that Palestinians, not bound by Airbnb’s class-action waiver, could bring a class action lawsuit to US courts claiming that Airbnb’s advertisements are misleading and cause harm to Palestinians at large—they could bring Airbnb users as witnesses to their case. That being said, US government regulation would likely prove to be the most effective path to justice.

Government regulation would occur through the FTC, which is tasked with enforcing truth-in-advertisement laws and is authorized to investigate and thwart false or misleading

¹⁴⁴ Ibid.

¹⁴⁵ In accordance with Airbnb’s *Controlling Law and Jurisdiction Provision*, any dispute brought by Airbnb users would have to be heard in a state court located in San Francisco County, San Francisco, California, or in a California District Court, and consistent with US or California law.

business practices.¹⁴⁶ The FTC explains that it “will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.” The FTC explains that it takes into account what an advertisement fails to convey when determining false advertisement, if such an omission “leaves consumers with a misrepresentation about the product [or service.]”¹⁴⁷ It should be noted that the FTC’s goal is not to punish companies for violating truth-in-advertisement laws, but rather to prevent harm through advertisement.¹⁴⁸ As such, if the FTC were to investigate Airbnb, it would likely order the company to improve its advertisements in disputed territories. It could order Airbnb to do so by implementing clearer labels of home rentals and corresponding maps, and by providing a clear disclaimer to its users that the home rental being considered is in disputed territory.

It is possible that if this were to occur, Airbnb would respond with a lawsuit citing the first Amendment as well as the Federal Communications Decency Act of 1996. The Act states that Internet platforms are not to be considered publishers, thus barring states from holding online platforms accountable for the speech of their users.¹⁴⁹ This law has been used by Airbnb in the recent past, and is used by many other website operators such as Amazon, Ebay, and Craigslist in order to evade federal regulation. However, referring to this law has not proven significantly successful for Airbnb as of late. Airbnb recently dropped cases in New York State and NYC.¹⁵⁰ Similarly, Airbnb unsuccessfully sought a preliminary injunction in October in an

¹⁴⁶ 15 U.S.C. §§ 41-58, as amended

¹⁴⁷ See: <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-faqs-guide-small-business>

¹⁴⁸ See: <https://www.ftc.gov/about-ftc/what-we-do/enforcement-authority>

¹⁴⁹ “Federal judge gives initial backing to SF law that holds online rental platform companies accountable for illegal rentals” City Attorney of San Francisco 8 November 2016

¹⁵⁰ Airbnb dropped the NYS case in order to focus on the NYC case, which Airbnb eventually dropped “as long as New York City only enforces the new law against hosts and does not fine Airbnb itself.” See:

attempt to invalidate a San Francisco Ordinance that makes online hosting-websites legally responsible for users' booking transactions (enforced in response to the prevalence of Airbnb users who are not registered under San Francisco law to rent their homes). U.S. District Judge James Donato expressed concern over Airbnb's reference to the Federal Communications Decency Act of 1996. He specifically questioned its relevance, as the proposed San Francisco ordinance "in no way treats plaintiffs as the publishers or speakers of the rental listings provided by hosts...[and] does not regulate what can or cannot be said or posted in the listings." He explained that there is no stipulation barring Airbnb from monitoring its users' listings or from notifying users that in order to post a rental, they must first be registered with the city, and clarified that the Ordinance would hold Airbnb "liable only for their own conduct, namely for providing, and collecting a fee for, Booking Services in connection with an unregistered unit."¹⁵¹ Additionally, in response to Airbnb's appeal to First Amendment rights, Judge Donato explained that

"A Booking Service as defined and targeted by the Ordinance is a business transaction to secure a rental, not conduct with a significant expressive element ... And plaintiffs have not established that the Ordinance was 'motivated by a desire to suppress speech.'"¹⁵²

The Ordinance has since gone into force. As such, while Airbnb may fight regulation regarding its labeling of disputed territories by claiming that it is an online platform that openly disclaims

Lintak, Andrew. "Airbnb has settled its lawsuit with New York City over short-term rental fines" The Verge. 3 December 2016

¹⁵¹ "Federal judge gives initial backing to SF law that holds online rental platform companies accountable for illegal rentals" City Attorney of San Francisco 8 November 2016

¹⁵² Ibid

all liability for the listings of its users, it is unlikely—based on recent rulings—that this argument would succeed.¹⁵³

Discrimination

Civil litigation can also be brought against Airbnb on the basis that its platform is promoting discrimination against Palestinians. Due to Israel's policies, no Palestinian is legally permitted to rent any of Airbnb listings in the Israeli settlements. In regards to these allegations about discrimination in Airbnb's platform, officials will likely explain that the company was complying with national law. Airbnb's new discrimination policy states that

“Outside of the United States and the European Union, some countries or communities may allow or even require people to make accommodation distinctions based on, for example, marital status, national origin, gender or sexual orientation, in violation of our general nondiscrimination philosophy. In these cases, we do not require hosts to violate local laws.”

As previously stated, the UNGPs explicitly recommend that if a business cannot mitigate human rights harms in its business platform in a specific location, it should cease to conduct business there. The very existence of a policy addendum sheds light on Airbnb's acknowledgement that these discriminatory policies are manifestly unlawful.¹⁵⁴ Yet Airbnb's policy essentially gives a

¹⁵³ Airbnb's policy claims, “Airbnb does not control, and has no right to control, your listing, your offline activities associated with your listing, or any other matters related to any listing, that you provide.” However, as noted, recent court rulings dispute this notion.

¹⁵⁴ The ICJ Panel does, however, note that “committing crimes pursuant to government orders or national laws...is not a defense, but may be considered in mitigation of punishment” See: Article 5 ILC Code; Article 7(4) ICTY Statute; Article 6(4) ICTR Statute and see *Farben Case*, p. 1179. In addition, the official position of any accused person, whether as Head of State or Government or as a responsible Government official, will not relieve such person of criminal responsibility nor mitigate punishment. This is expressly excluded as a defence by the relevant international instruments. Article 7(2) ICTY Statute; Article 6(2) ICTR Statute; Article 27 ICC Statute; Article 7 ILC Code. See also: Article 2(3) CAT, Article 6(2) ICCPED. 183

green light to discrimination by acknowledging that it is legally required in some locations, thereby relinquishing its responsibility to combat it. Because complying with national laws is not a safeguard from prosecution for crimes under international law, it could be argued that Airbnb is accountable for complicity in Israel's discriminatory practices and corresponding violations of international human rights law, as set forth in both ICCPR and ICSECR.¹⁵⁵ Such a prosecution could theoretically occur through ATCA.

However, some might argue that allowing these home rentals to remain available allows people to come to the area and have exposure to a reality that might otherwise go overlooked. In other words, by allowing these rentals to remain on their website, Airbnb is allowing people to see firsthand the reality on the ground, thus giving people the opportunity to make their own informed decisions regarding the conflict. Some might therefore contend that the benefits might outweigh the harms.

Nonetheless, in addition to the fact that Palestinians cannot legally rent these homes, it is notably difficult for anyone of Arab descent to rent a listing in the Israeli settlements. In order to assess the extent of discrimination exhibited by Airbnb hosts in the Israeli settlements, an Israeli academic and blogger under the pseudonym John Brown created a fake guest account under the name Haled, an American citizen of Palestinian descent. He—and his research team—sent out reservation requests to dozens of listings, but they were rejected by all but one Airbnb host.¹⁵⁶ While most hosts simply rejected Haled's reservation request, others explained their refusal: "I am sorry but we will not be able to confirm your reservation. Due to the political situation it is

¹⁵⁵ While Palestinians are unable to reside in Israeli settlements in the West Bank irrespective of Airbnb's platform, Airbnb presents a new means for this state-sponsored discrimination to take place

¹⁵⁶ This host added a caveat that "the only problem is that due to the tense situation in Israel, you may be prompted to a security check at the entrance of Tekoa."

court located in San Francisco County, San Francisco, California, or in a California District Court, and administered according to US federal law or California state law.¹⁶⁰ Palestinians and Arab Israelis could therefore bring claims that Airbnb is in violation of the Civil Rights Act of 1964, the California Government Code 12955, and California's Unruh Civil Rights Act, all of which prohibit discrimination based on race, color, religion, sex, or national origin.¹⁶¹

Conclusion

In a recent Blog on Airbnb's website, CEO Brian Chesky wrote,

“For so long, people thought Airbnb was about renting houses. But really, we're about home. You see, a house is just a space, but a home is where you belong. And what makes this global community so special is that for the very first time, you can belong anywhere. That is the idea at the core of our company: belonging.”¹⁶²

In fact, when a wave of fires broke out across Israel in late November 2016, Airbnb was quick to message its users: “In light of the recent events in Israel we want to let you know we'll be waiving all service fees and enabling hosts to list for free. We've also launched a disaster response page so you can easily connect with people in need of a place to stay.”¹⁶³ Airbnb ensured users that they would still be covered by Airbnb's insurance policies on a no-cost basis. Airbnb sent similar messages to Airbnb users in Nepal and Ecuador after their countries were stricken with devastating earthquakes, and raised over \$200,000 from its users in support of

¹⁶⁰ Airbnb's Controlling Law and Jurisdiction Provision

¹⁶¹ See: Civil Rights Act of 1964 Title XIII (Fair Housing Act/Fair Housing Amendments Act), 42 U.S.C. §§ 3604, 3606 (race, color, religion, sex, familial status, “handicap” or national origin); see also 42 U.S.C. §§ 3602, 3607 (definitions, exemptions); Cal. Gov't Code § 12955; Cal. Civ. Code §§ 51, 51.2

¹⁶² See: <http://blog.airbnb.com/belong-anywhere/>

¹⁶³ Times of Israel Staff. “Airbnb helps Haifa fire evacuees find places to stay” Times Of Israel 25 November 2016

rebuilding efforts in Nepal.¹⁶⁴ These disaster relief policies highlight Airbnb’s commitment to the ethos of community; they reflect Airbnb’s role as a social partner that is committed to supporting communities in need. However, these top-down, voluntary actions do not stand in the place of Airbnb’s responsibility to mitigate and prevent human rights harms caused by its business platform. More specifically, for a company that emphasizes the importance of home and belonging, they are doing little to ensure that their business does not infringe on the rights of Palestinians who—for the greater part of the last century—have been denied both a home and a sense of belonging. When Airbnb continues to neglect to address its presence in Israeli settlements, its constant talk about ‘community’ ‘sharing’ and ‘belonging’ becomes, in the words of U.S. District Judge Donato, “a little hard to swallow.”¹⁶⁵

Just recently, in a powerful speech following the US abstention from Security Council Resolution 2334 Secretary of State John Kerry remarked:

“[The] policies of this government – which the Prime Minister himself just described as ‘more committed to settlements than any in Israel’s history’ – are leading...towards one state. In fact, Israel has increasingly consolidated control over much of the West Bank for its own purposes – effectively reversing the transition to greater Palestinian civil authority called for by the Oslo accords. I don’t think most people in Israel – and certainly in the world – have any idea how broad and systematic this process has become.”¹⁶⁶

¹⁶⁴ See: <https://www.airbnb.com/disaster-response>

¹⁶⁵ Judge Donato made this comment in response to Airbnb’s lawsuit against San Francisco’s recent ordinance. Barmann, Jay. “Airbnb Dealt Blow By Federal Judge In Their Challenge To SF Crackdown On Illegal Rentals” SFist. 9 November 2016

¹⁶⁶ “FULL TRANSCRIPT: Kerry Blasts Israeli Government, Presents Six Points of Future Peace Deal” Haaretz. 28 December 2016

If Airbnb is truly a company that believes in community and the dignity of each human life, as Brian Chesky has so often remarked and as its disaster relief policies suggest, then it should promptly address its controversial presence in Israeli settlements. Airbnb can take immediate action by providing a disclaimer alongside all listings in Israeli settlements, ensuring that Airbnb users are aware that the advertised homes are on disputed land that is considered illegal under international law. It can also follow in the footsteps of other companies by removing its presence from Israeli settlements altogether. In 2013, London-based security firm G4S cited its ethics policy to explain its cessation of business contracts with the Ofer Military Prison near Ramallah, as well as West Bank checkpoints and a police station in the E-1 area east of Jerusalem.¹⁶⁷ Similarly, Norway Pension Fund divested from Elbit Systems Ltd, as the Fund's Council on Ethics found that conducting business with Elbit Systems amounted to "an unacceptable risk of contribution to serious violations of fundamental ethical norms as a result of the company's integral involvement in Israel's construction of a separation barrier on occupied territory."¹⁶⁸ Norway's Finance Minister Kristin Halvorsen added that "[W]e do not wish to fund companies that so directly contribute to violations of international humanitarian law."¹⁶⁹

If Airbnb were to bar its users from offering listings in Israeli settlements, it would send a message to the global community and to Israeli authorities that settlement expansion is not acceptable. By doing so, Airbnb—a powerful, multi-billion dollar company—could help to ensure the rights of millions of Palestinians in the West Bank. While one company alone will not

¹⁶⁷ Pileggi Tamar "Security firm G4S leaving Israel, denies BDS to blame" Times of Israel 10 March 2016

¹⁶⁸ Adams, Elizabeth "Norway's Pension Fund Drops Israel's Elbit" 3 September 2009

¹⁶⁹ Ibid.

change the reality on the ground, the statement it makes could easily create a domino affect, the results of which could truly alter the geopolitical landscape, and in doing so, can bring both Israelis and Palestinians closer to peace.

In the midst of one of the most aggressive governments to exist in Israeli history, it is Airbnb's responsibility to ensure that it plays its role in preserving the rights of Palestinians living in the West Bank. If it fails to do so—as current trends suggest—that responsibility will fall to advocates and lawyers. As San Francisco City Attorney Dennis Herrera said in reference to Airbnb's recent lawsuit: "Online businesses don't get a free pass [from regulation]... They have to play by the rules, just like everybody else." In other words, if Airbnb continues to evade its legal and ethical responsibilities in regards to its presence in Israel's west bank settlements, it should be prepared to go to court.

APPENDIX

Email to Airbnb CEO Brian Chesky:

Dear Mr. Chesky,

I am a graduate student at Columbia University's Institute for the Study of Human Rights, and I am currently writing my thesis on Airbnb's corporate activity in Israeli settlements located in the West Bank. I know this is a conventionally polarizing topic, but I hope you will take the time to answer a few of my questions.

As you have likely heard, there are numerous Airbnb listings in Israeli settlements, which are deemed illegal by the international community and illegitimate by the US. Further, these properties are listed as being located within the State of Israel—Airbnb maintains listings in both Israel and the Palestinian Territories, but while homes in Ramallah and Nablus are listed as within the Palestinian Territories, homes in settlements such as Efrat, Tekoa, and Ma'ale Rehavam are listed as being inside of Israel. This is problematic for several reasons: 1) Airbnb is profiting from properties located within illegal settlements; 2) the listing of Israeli Settlements in the West Bank as located in the State of Israel is false advertisement and does not afford Airbnb guests the information necessary to make an informed decision regarding their consumer activity; 3) Palestinians themselves cannot legally stay in these Airbnb listings, and other Arabs who have applied to stay in them have been rejected, leading to accusations of discriminatory practices.

Aside from the issue of discrimination, which I know Airbnb is working to address, are you working to improve any of the above-mentioned issues? **I am particularly interested to know if you are working to improve the labeling of advertisements and their corresponding maps in order to make it more clear to users if they are booking a listing in a disputed territory** (this would also apply to territories such as Western Sahara, Kashmir, etc.)

More importantly, what seems to have gone wholly overlooked is that there are also several Airbnb listings in Israeli outposts, such as those in Ma'ale Rehavam. Israeli outposts are similar to settlements, but are built without the planning and construction statutes that are necessary for authorization. While international law makes no distinction and considers both of these illegal, *outposts are considered unauthorized and illegal under Israeli law* (see the 2005 Sasson report, commissioned by former Israeli Prime Minister Ariel Sharon). **I am wondering if Airbnb is aware of this distinction, and if it can respond to the nuance involved in this distinction?**

Lastly, you noted earlier this year that “this particular issue is complex: people have been debating this matter for 5,000 years, so a hospitality company from San Francisco isn’t going to have all the answers but at the end of the day, we want to help open the world, not close it off.” However, this case is not without precedent. International laws, regulations, and guiding principles exist to inform companies doing business in conflict zones about their legal and ethical business-responsibilities. In fact, the UN Special Rapporteur for human rights in the Palestinian Territories has consistently expressed his readiness to work with businesses to assist them in maintaining responsible business practices –**would Airbnb be open to working with him, or another expert in corporate social responsibility to mitigate harms caused to Palestinians through its platform?**

Mr. Chesky—you own a powerful, multi-million dollar business enterprise, and by enacting proper due diligence measures and holding Airbnb accountable to international human rights standards as they apply to the West Bank and elsewhere, you could genuinely lead a path to positive, effective change. I hope you take the time to consider these issues.

I look forward to your response.

All the best,

Rachel Riegelhaupt

Ps: If you would like more info on any of the above-mentioned details, I would be happy to discuss them with you further.

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