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Legal Liability for Corporations Doing Business in the West Bank: An Analysis of Corporate Liability and a Shareholder Proposal Solution for Mitigating Risky Business Activity

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LEGAL LIABILITY FOR CORPORATIONS DOING
BUSINESS IN THE WEST BANK: AN ANALYSIS OF
CORPORATE LIABILITY AND A SHAREHOLDER
PROPOSAL SOLUTION FOR MITIGATING
RISKY BUSINESS ACTIVITY

MILA KELLY*

ABSTRACT

For over half a century, Israeli Settlements in the occupied West Bank have expanded significantly in both land and economic activity. While this expansion has not been without criticism from the international community over fear of humanitarian law violations, global businesses have not shied away from the profitability of this region. This engagement in corporate activity within any disputed territory comes with its fair share of business risk, including legal liability for complicity in purported human rights violations.

This Note will examine the hypothetical liability for corporations doing business in the West Bank and explain how international law and the Alien Tort Statute have both proved to be ineffective systems of accountability. Because of this, companies have continued to engage in internationally condemned conduct without legal repercussions. However, as this operation is not free of financial and social risk to a company and subsequently its shareholders, this Note will suggest that socially responsible shareholder proposals are a viable solution to address the risky decision to conduct business in the West Bank and other disputed territories.

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INTRODUCTION

Shortly following the 1967 Arab-Israeli War, in an effort to defend against Palestinian attacks, border settlements (called *nahalim*) were constructed by the Israeli government within the newly occupied territories.¹ These settlements continued to expand over the past fifty-two years, both rapidly growing in infrastructure as well as reaching further within the West Bank.² Currently, “settlements and their infrastructure comprise over 60 per cent of the occupied West Bank,”³ and the Israeli-Palestinian settlement conflict has become a “hot topic of political debate” in many countries around the globe.⁴

This perpetual increase in settlement activity has faced criticism from the United Nations (U.N.), NGOs, and the United States Government.⁵ Under the Fourth Geneva Convention, “the transfer by an occupying power of its own population into the territory it occupies is forbidden.”⁶ And commentators contend that the settlements breach international humanitarian laws, deriving from Article 49 of the Fourth Geneva Convention, the 1907 Hague Relations, and the Rome Statute of the International Criminal Court.⁷ These laws are significant as they ensure that civilians are protected during war time and require occupying powers to adhere to their “responsibilit[y] to protect the wellbeing of the occupied population.”⁸

¹ Oraneet Shikmah Orevi, *A Holistic Approach to the Conflict of Israel and Palestine: Where We Are Now and Where We Can Go*, 19 ANNUAL SURVEY OF INT'L & COMPAR. L. 105, 119 (2013) (discussing the creation of border settlements by Israel after taking control of the West Bank in the years following the 1967 War).

² *Id.* at 122–23.

³ AMNESTY INT'L, THINK TWICE: CAN COMPANIES DO BUSINESS WITH ISRAELI SETTLEMENTS IN THE OCCUPIED PALESTINIAN TERRITORIES WHILE RESPECTING HUMAN RIGHTS? 2 AI Index MDE 15/9717/2019 (2019), <https://www.amnesty.org.uk/files/2019-03/Think%20Twice%20report.pdf> [<https://perma.cc/WJ42-SEZU>] [hereinafter THINK TWICE REPORT].

⁴ Asli Ü Bâli, *International Law & Rights-Based Remedies In The Israel-Palestine Conflict: Settlements*, 28 HASTINGS INT'L & COMPAR. L. REV. 387, 388 (2005).

⁵ See Ena Cefo, *Corporate Human Rights Violations in the Occupied Palestinian Territories: Is There Any Recourse?*, 47 GEO. J. INT'L L. 793, 808 (2016).

⁶ THINK TWICE REPORT, *supra* note 3, at 2.

⁷ *Id.* at 20, 25, 38.

⁸ *Id.* at 4.

Regardless, there are currently 413,000 individuals of Israeli citizenship living within the West Bank in 132 settlement locations.⁹ And businesses have followed: Airbnb, Hewlett Packard (HP), and Caterpillar are just a few of the large, multinational businesses to operate in the West Bank.¹⁰

Part I of this Note provides an overview of the history of the Israeli-Palestinian conflict, and explains the condemnation and contested illegality of Israeli settlements in the occupied West Bank.¹¹ Part II discusses the types of multinational corporations that operate within the West Bank and details the variety of roles they play in creating and furthering settlement infrastructure.¹² This Note, in Part III, will examine the potential legal liability for corporations doing business in the West Bank.¹³

⁹ OFF. E.U. REP., SIX-MONTH REPORT ON ISRAELI SETTLEMENTS IN THE OCCUPIED WEST BANK, INCLUDING EAST JERUSALEM, (REPORTING PERIOD JANUARY–JUNE 2019) 1 (Sept. 30, 2019), https://eeas.europa.eu/sites/eeas/files/20190930_final_six-month_report_on_israeli_settlements_in_the_occupied_west_bank_including_east_jerusalem_reporting_period_january_to_june_2019_0.pdf [<https://perma.cc/AJ8Y-33KG>] [hereinafter EU REPORT].

¹⁰ Other multinational corporations operating within the West Bank include Israeli, European, and American based companies such as: Honeywell, Siemens, Heidelberg Cement AG, Cemex, Motorola, Ahava, Partner, and Cellcom. See Yumna Patel, *UN releases database of companies operating in illegal West Bank settlements*, MONDOWEISS (Feb. 12, 2020), <https://mondoweiss.net/2020/02/un-releases-database-of-companies-operating-in-illegal-west-bank-settlements/> [<https://perma.cc/QC9T-W5KG>]; *From Motorola to Ahava: The UN Blacklist of Companies Doing Business in Israeli Settlements*, HAARETZ (Oct. 26, 2017), <https://www.haaretz.com/israel-news/from-motorola-to-ahava-the-un-blacklist-of-companies-working-in-settlements-1.5460550> [<https://perma.cc/KB9T-K4DP>]; BARBARA KUEPPER ET AL., *DOING BUSINESS WITH THE OCCUPATION: ECONOMIC AND FINANCIAL RELATIONSHIPS OF FOREIGN COMPANIES WITH ISRAEL'S SETTLEMENT ENTERPRISE 1* (2018), <https://www.profundo.nl/download/11-11-11-1806> [<https://perma.cc/L66Z-FWXP>]; see also Dave Majumdar, *Honeywell receives Israeli order for M-346 engines*, FLIGHT GLOBAL (Sept. 5, 2012), <https://www.flightglobal.com/honeywell-receives-israeli-order-for-m-346-engines/106887.article> [<https://perma.cc/JP3V-ETUS>]. In 2016, the UN Human Rights Council, in resolution 31/36 called for the creation of a database of all businesses engaged in activities within or related to the Israeli settlements in the Occupied Palestinian Territory. Patel, *supra* note 10. On February 12, 2020, the UN Human Rights Council released the list naming 112 business enterprises with ties to Israeli settlements in the West Bank. *Id.*

¹¹ See *infra* Part I.

¹² See *infra* Part II.

¹³ See *infra* Part III.

Namely, how major concerns for corporations include claims brought under international law and the Alien Tort Statute.¹⁴ Furthermore, after concluding that the imposition of corporate liability under both international law and the Alien Tort Statute are only potential and ineffective solutions to penalize violations of international law by corporations,¹⁵ Part IV will argue that shareholder proposals are a viable solution to address a corporation's decision to conduct business in disputed territories.¹⁶

I. ISRAELI SETTLEMENTS IN THE WEST BANK: CONDEMNATION AND CONTESTED LEGALITY

The development and expansion of Israeli settlements and the housing units within them have continued to progress rapidly over the last few years.¹⁷ With 4,647 new housing units having been added between January and June of 2019, and the approval to create a new settlement in the northern region of the West Bank, the demand for business activities within the occupied territories has continued to increase steadily.¹⁸ However, this progression has not been without condemnation nor an increase in scrutiny over the legality of these settlements.¹⁹ The applicability of international law, deriving from the Fourth Geneva Convention, remains in dispute as to whether these settlements within the West Bank are legal under stipulations of the Convention related to the Protection of Civilian Persons in Times of War within an occupied territory.²⁰

¹⁴ See *id.* The Alien Tort Statute is also referred to as The Alien Tort Claims Act. See *infra* Section III.A.3.

¹⁵ See *infra* CONCLUSION.

¹⁶ See *infra* Part IV.

¹⁷ EU REPORT, *supra* note 9, at 1.

¹⁸ *Id.*

¹⁹ THINK TWICE REPORT, *supra* note 3, at 2.

²⁰ Rachel Riegelhaupt, Risky Business: Airbnb's Complicity in Human Rights Violations in Israel's West Bank Settlements 6–7 (Jan. 2017) (unpublished M.A. thesis, Columbia University) (on file with author); Int'l Com. Red Cross, *Treaties, States Parties and Commentaries: Convention (IV) relative to the Protection of Civilian Persons in Time of War Geneva, 12 August 1949*, <https://ihl-databases.icrc.org/ihl/INTRO/380> [<https://perma.cc/VR24-UEME>].

The Geneva Conventions which were adopted before 1949 were concerned with combatants only, not with civilians During World War I the Hague provisions proved to be insufficient in

The Israeli government has consistently maintained that the application of Article 2 of the Fourth Geneva Convention, which applies to “all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties”²¹ is improper because the West Bank:

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.²²

However, in its 2004 opinion to the UN General Assembly, the International Court of Criminal Justice rejected this claim and held that a territory’s status of sovereignty prior to a conflict is immaterial in determining Article 2 application.²³ Further, the applicability of the Fourth Geneva Convention has been sustained by the United Nations Security Council.²⁴ In its 1979

view of the dangers originating from air warfare and of the problems relating to the treatment of civilians in enemy territory and in occupied territories. The International Conferences of the Red Cross of the 1920’s took the first steps towards laying down supplementary rules for the protection of civilians in time of war. The 1929 Diplomatic Conference, which revised the Geneva Convention on wounded and sick and drew up the Convention on the treatment of prisoners of war, limited itself to recommending that “studies should be made with a view to concluding a convention on the protection of civilians in enemy territory and in enemy occupied territory” The events of World War II showed the disastrous consequences of the absence of a convention for the protection of civilians in wartime. The Convention adopted in 1949 takes account of the experiences of World War II The great bulk of the Convention (Part III—Articles 27–41) puts forth the regulations governing the status and treatment of protected persons; these provisions distinguish between the situation of foreigners on the territory of one of the parties to the conflict and that of civilians in occupied territory.

Id.

²¹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War. Art. 2, Aug. 12, 1949, 6 U.S.T. 3516.

²² See Riegelhaupt, *supra* note 20, at 7.

²³ *Id.*

²⁴ *Id.* at 8.

Resolution 446, the Security Council articulated that the Protection of Civilian Persons in Time of War 12 August 1949 sufficiently applies to “Arab territories occupied by Israel since 1967, including Jerusalem.”²⁵ Within a large portion of the international community, Israeli Settlements within the West Bank are perceived as illegal due to the violation of Article 49 of the Fourth Geneva Convention, which prohibits an occupying power—in this case, Israel—“from transferring its own citizens into the territory that it is [currently] occupying.”²⁶

In addition to commentary from Israel’s international critics about the inherent illegality of these settlements under the Fourth Geneva Convention,²⁷ the infringement of Palestinian rights has also been questioned by NGOs and proponents of the Boycott, Divestment and Sanctions (BDS) movement²⁸ (“an international campaign to boycott Israel over its alleged harsh treatment of Palestinians”).²⁹

One particular area of Israel, Area C, has faced harsh criticism due to the estimated 300,000 Palestinians living within the area whose access to building permits, water resources, and labor rights are arguably being infringed upon.³⁰ All Israeli settlements, and more than 50% of the West Bank,³¹ are located in Area C which is currently under the exclusive control of Israel’s military and government.³² Complete restrictions on construction by Palestinians have been implemented in 70% of Area C, and military building permits are required for the remaining 30%.³³ Of the applications submitted for these permits, an estimated 5%

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 8–9.

²⁸ *Id.*; Terry Collins, *What Is BDS? Boycott, Divestment, and Sanctions Explained*, FORTUNE (Aug. 19, 2019, 3:52 PM), <https://fortune.com/2019/08/19/what-is-bds-in-relation-to-israel/> [<https://perma.cc/L8WF-XNMM>].

²⁹ Collins, *supra* note 28.

³⁰ See Riegelhaupt, *supra* note 20, at 11. NGO’s such as Amnesty International, and Human Rights Watch have distributed reports with the goal of documenting and bringing to light violations of humanitarian law within the West Bank, specifically in the settlements of Area C. See THINK TWICE REPORT, *supra* note 3, at 8–12.

³¹ See Riegelhaupt, *supra* note 20, at 10.

³² *Id.* at 10–11.

³³ *Id.* at 11.

are approved.³⁴ As a result, homes are frequently built illegally—without a permit—and are subsequently destroyed,³⁵ but this practice has not been without disapproval from the international community.³⁶ Additionally, water consumption in some portions of the West Bank has arguably been hindered due to the majority of water resources within this area being controlled by Israel.³⁷ According to B'tselem, an Israeli based NGO that comments on human rights within the occupied territory, the World Health Organization's (WHO) recommended "100 liters per capita per day" is being unfulfilled in "42 communities in the southern West Bank [which] use less than 60 liters of water per person per day."³⁸ Finally, many opponents of Israeli occupation have argued that Palestinian laborers, who are frequently hired to work in the settlements, are denied fundamental rights to fair labor standards and are "vulnerable to exploitation by contractors and middlemen."³⁹

As a result of these increased allegations of humanitarian law violations, the International Criminal Court, in 2015, opened its third "preliminary examination of the situation in Palestine to determine 'whether there is a reasonable basis to proceed with an investigation.'"⁴⁰ However, the challenge of prosecuting these purported violations under international law is quite complicated.⁴¹ And as multinational corporations have begun operating business

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* Israel argues that the homes are illegally built in an area which is under a construction ban; however, the United Nations has concluded that "the destruction of private property in occupied territory is only permissible where rendered absolutely necessary for military operations, which is not applicable" with Israel's current obligations under international law. United Nations, *Israeli destruction of Palestinian homes in West Bank 'not compatible' with international humanitarian law, UN says*, UN NEWS (July 22, 2019), <https://news.un.org/en/story/2019/07/1042981> [<https://perma.cc/F792-9KXV>]. Furthermore, the international community believes that the destruction of homes "results in forced evictions, and contributes to the risk of forcible transfer facing many Palestinians in the West Bank, including East Jerusalem." See Riegelhaupt, *supra* note 20, at 11.

³⁷ See Riegelhaupt, *supra* note 20, at 11.

³⁸ *Id.* at 12.

³⁹ THINK TWICE REPORT, *supra* note 3, at 12.

⁴⁰ *Referral by the State of Palestine Pursuant to Articles 13(a) and 14 of the Rome Statute*, Ref: PAL-180515-Ref (May 15, 2018).

⁴¹ See Cefo, *supra* note 5, at 808.

on Israeli settlements in the West Bank, the question of available recourse against such companies—both civilly and criminally—still remains.⁴²

II. CORPORATIONS DOING BUSINESS IN THE WEST BANK

In 2011, the UN Guiding Principles for Business and Human Rights (UNGPs) were recognized by the Human Rights Council (HRC).⁴³ This was the first time that the HRC and the UN Commission on Human Rights imposed guidance in the area of business and human rights.⁴⁴ Written by Professor John Ruggie, the UNGPs outline a way for businesses to prevent violations of human rights while still conducting business activities, especially in high-risk areas.⁴⁵ Furthermore, the UNGPs develop a definition for the corporate responsibility of respecting human rights law, entailing not just the requirement for business enterprises to comply with applicable laws, but also that corporations must respect those human rights laws which have been internationally recognized in the areas they are operating within.⁴⁶ While this requirement is a responsibility to refrain from harming, the UNGPs also indicate a due diligence standard to prevent such violations and advise that corporations prioritize mitigation in situations where risks would be irreversible.⁴⁷ Even though these guiding principles are not legally binding, they are nevertheless accepted as authoritative guidance within the international community, being founded upon social expectations.⁴⁸

A. *Types of Businesses and the Roles They Play*

Because the settlements and related infrastructure encompass over 60% of the West Bank, multinational corporations

⁴² *Id.* at 810.

⁴³ John Gerard Ruggie, *The Social Construction of the UN Guiding Principles on Business and Human Rights* (Corp. Resp. Initiative, Harv. Kennedy Sch., Working Paper No. 67, 2017).

⁴⁴ Stephanie Bijlmakers, *Corporate Social Responsibility, Human Rights, and the Law*, 3 (Routledge Research in Sustainability and Business 2019).

⁴⁵ See Ruggie, *supra* note 43, at 1–2, 12.

⁴⁶ See Bijlmakers, *supra* note 44, at 3.

⁴⁷ *Id.*

⁴⁸ *Id.* at 3–4.

operating in the areas of banking and finance, construction, utilities, manufacturing and tourism, have found substantial business in these areas.⁴⁹ While many Israeli based businesses operate within the West Bank settlements, there is nevertheless a significant number of foreign companies pursuing commercial activities there as well.⁵⁰ Corporations become involved in commerce within the West Bank by either operating directly within settlements, or by maintaining business relationships with them.⁵¹ Business activity is crucial to the development and maintenance of nearly every aspect of these settlements, therefore, numerous economic incentives such as decreased rent and labor costs as well as tax breaks have been implemented.⁵² Consequently, economic activities within Area C are notably expanding.⁵³ Since enterprises directly function to construct, consolidate and expand Israeli Settlements within the West Bank, the risk of facilitating human rights violations, through contributory actions, is exacerbated.⁵⁴

Certain industries, due to the nature of their activities, may be considered more contributory than others in settlement expansion.⁵⁵ For example, financial institutions, such as banks and insurance companies, contribute significantly to strengthening the settlement economy by providing capital and services which bolster infrastructure activities.⁵⁶ While the principle financial institutions involved in settlement economy are Israeli banks,⁵⁷ and this Note focuses mainly on foreign corporations, these banks are often invested in other overseas financial institutions who provide capital or underwriting services,⁵⁸ thus contributing to the development and economy of settlements.⁵⁹ The international community has criticized the role of Israeli banks.⁶⁰ Specifically,

⁴⁹ THINK TWICE REPORT, *supra* note 3.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 15.

⁵⁵ *Id.* at 13.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at 15.

⁵⁹ *Id.*

⁶⁰ *Id.* at 13.

the NGO Human Rights Watch, in a 2017 legal assessment, responded to institutions defending their actions, by establishing that:

[Israeli] banks can, under domestic law, avoid providing many services that support settlements and settlement activity [W]hile banks cannot, under Israeli law, reject settlers as customers, they do not have to provide financial services that involve settlements, such as financing construction projects or mortgages for settlement properties, when the grounds for refusal are not the place of residence of the customer but rather the business and human rights considerations stemming from the location of the activities⁶¹

Further, the continued development and expansion of Israeli settlements within Area C of the West Bank is made possible through the supply of materials, equipment, and contracted labor by construction companies.⁶² Activities such as demolitions, new building and the clearing of land are some of the most visible sources of evidence pointing to heavy involvement by these businesses in the expansion and maintenance of settlements.⁶³ In 2012, the UN Human Rights Council conducted a fact-finding mission to report on the “implications of the Israeli settlements on the human rights of the Palestinian people throughout [the West Bank].”⁶⁴ This report identified several types of business activities that raise concerns about potential human rights violations emerging out of direct or indirect facilitation and profit gain from the construction and expansion of West Bank settlements.⁶⁵ Some of these activities include “[t]he provision of services and utilities supporting the maintenance and existence of settlements,” “[t]he supply of equipment for the demolition of housing and property,” and “[t]he supply of equipment and materials facilitating the construction and the expansion of settlements and the wall.”⁶⁶

⁶¹ KUEPPER ET AL., *supra* note 10, at 1, 11 (quoting *Israeli law and banking in West Bank Settlements*, HUMAN RIGHTS WATCH (2017), <https://www.hrw.org/news/2017/09/12/israeli-law-and-banking-west-bank-settlements> [<https://perma.cc/B2EZ-9V3X>]).

⁶² *Id.* at 30.

⁶³ THINK TWICE REPORT, *supra* note 3, at 15.

⁶⁴ U.N. GAOR, 22nd Sess., U.N. Doc. A/HRC/22/63 (Feb. 7, 2013).

⁶⁵ *Id.* at 20.

⁶⁶ *Id.*

Specifically, the Israeli West Bank Security Barrier Wall, a dividing wall along the Green Line, which was approved for development in 2002, has recently been a key factor in the criticism against construction companies for their role in its development, as reports of human rights violations have continued to surface.⁶⁷

Utility companies, mainly operating in water, energy and waste disposal, have found a booming market in the West Bank and its settlements.⁶⁸ Large West Bank industrial zones, such as Mishor Edomim and Barkan, are home to several manufacturing companies whose factories produce a wide range of goods for export worldwide.⁶⁹ Of the corporations operating out of these zones, the highest percentage of their industries are related to metals, plastics, textiles, cosmetics and food products.⁷⁰ For example, in a 2009 report conducted by Profundo, an independent not-for-profit company based out of the Netherlands, sixty-eight British companies operating in these industries were identified to have either “direct or indirect relationship with Israeli settlements” in the West Bank.⁷¹ Moreover, one of the primary sources of employment for Palestinians working in the Settlements is in the manufacturing industry.⁷² Wages in these industries tend to be higher than in other areas of the West Bank; however, accusations about violations of proper employment conditions and labor rights are frequently made.⁷³ An increase in industries flooding this area due to the cheap labor and tax incentives is proving to raise additional concerns about potential human rights violations.⁷⁴

⁶⁷ Netta Ahituv, *15 Years of Separation: The Palestinians Cut Off From Jerusalem by the Wall*, HAARETZ (Mar. 10, 2018), <https://www.haaretz.com/israel-news/.premium.MAGAZINE-15-years-of-separation-palestinians-cut-off-from-jerusalem-by-a-wall-1.5888001> [<https://perma.cc/4ZL5-6LF4>].

⁶⁸ See U.N. GAOR, *supra* note 64, at 20.

⁶⁹ *Id.*

⁷⁰ *Report: UK Economic Links with Israeli Settlements*, THE ELECTRONIC INTIFADA (Mar. 18, 2009), <https://electronicintifada.net/content/report-uk-economic-links-israeli-settlements/3423> [<https://perma.cc/7DN3-M4ZA>].

⁷¹ *Id.*

⁷² *See Occupation, Inc.: How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights*, HUMAN RIGHTS WATCH (Jan. 19, 2016), <https://www.hrw.org/news/2016/01/19/occupation-inc-how-settlement-businesses-contribute-israels-violations-palestinian> [<https://perma.cc/R5KG-MWGM>].

⁷³ *See id.*

⁷⁴ *See id.*

Finally, the tourism industry of the West Bank has proven to be a crucial incentive for tourists choosing to visit the *Holy Land* of Israel.⁷⁵ In a 2015 study conducted by the Israeli Ministry of Tourism, it was found that nearly “22% of tourist listed pilgrimage as the prime purpose of their visit, suggesting that East Jerusalem and Bethlehem were critical destinations.”⁷⁶ This same ministry in 2014 had also found that almost half of the most frequently trafficked tourist sites were located inside of the West Bank.⁷⁷ Furthermore, the Israeli government has developed programs aimed at enriching the tourism industry within Israeli settlements.⁷⁸ These programs provide assistance in the creation and maintenance of hotels and other holiday accommodations within the West Bank, specifically in East Jerusalem and the settlements.⁷⁹ Short- and long-term rental properties located within Area C settlements are frequently listed online through online marketplaces such as Airbnb and TripAdvisor.⁸⁰ However, these listings are typically only available to individuals who have been permitted to enter such areas,⁸¹ including “Israeli citizens and residents, holders of Israeli entry visas and people of Jewish descent.”⁸² While Airbnb and TripAdvisor themselves are not restricting access to properties within the settlements, Israel does place strict limitations on access to the settlements.⁸³ This means that Palestinians who are residents of the West Bank are excluded from entering the settlements for the purpose of property rental.⁸⁴ In addition, properties are often listed and advertised without a clear description of their location within a West Bank settlement, which can raise potential complications for tourists who may feel misled into visiting these sites.⁸⁵

⁷⁵ See WHO PROFITS, FLASH REPORT: TOURING ISRAELI SETTLEMENTS: BUSINESS AND PLEASURE FOR THE ECONOMY OF OCCUPATION 1 (2017), https://whoprofits.org/wp-content/uploads/2018/06/old/touring_israeli_settlements_wp_flash_report_oct_2017-3.pdf [<https://perma.cc/8S8S-V7AU>].

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *See id.* at 3.

⁷⁹ *Id.*

⁸⁰ *Id.* at 13–18.

⁸¹ *See* THINK TWICE REPORT, *supra* note 3, at 18.

⁸² *See id.*

⁸³ *See id.*

⁸⁴ *See id.*

⁸⁵ *See id.*

Nonetheless, tourism activities in the West Bank have been found to have led directly to the expansion of settlements, which increases the risk of involvement of companies facilitating tourism in potential violations of human rights.⁸⁶ Nevertheless, companies view these settlements as a viable source of business.⁸⁷ Accordingly, companies operating in these various industries within the West Bank have been willing to risk potential repercussions of international corporate liability for the pursuit of financial gains.⁸⁸

B. The Involvement of Multinational Corporations in the West Bank Israeli Settlements: A Case Study of Airbnb, HP Enterprises and Caterpillar

1. Airbnb

Airbnb, a United States based corporation, functions as an online marketplace for individuals to arrange accommodations and experiences worldwide.⁸⁹ While Airbnb does not own any properties, “[i]t acts as an intermediary between those who want to rent out space and those who are looking for space to rent.”⁹⁰ With approximately six million listings in over 191 countries as of October 2019, Airbnb serves an estimated 150 million users worldwide on its platform.⁹¹

In November of 2018, Airbnb announced that it would begin to reevaluate and ban the listing of properties located in disputed territories.⁹² This was targeted specifically at Israeli-controlled

⁸⁶ SEE AMNESTY INT’L, DESTINATION: OCCUPATION DIGITAL TOURISM AND ISRAEL’S ILLEGAL SETTLEMENTS IN THE OCCUPIED PALESTINIAN TERRITORIES, 7, 10 (2019), https://www.amnesty.org/download/Documents/MDE1594902019_ENGLISH.PDF [<https://perma.cc/X6L6-8QYW>] [hereinafter DESTINATION: OCCUPATION REPORT].

⁸⁷ *Id.* at 12.

⁸⁸ *Id.*

⁸⁹ *What is Airbnb and how does it work?*, AIRBNB, <https://www.airbnb.com/help/article/2503/what-is-airbnb-and-how-does-it-work> [<https://perma.cc/ZEF6-7R94>].

⁹⁰ Erika Rawes & Kailla Coomes, *What is Airbnb? What to know before becoming a guest or host*, DIGITAL TRENDS (Nov. 8, 2019, 2:20 PM), <https://www.digitaltrends.com/home/what-is-airbnb/> [<https://perma.cc/QE3X-XR4C>].

⁹¹ *Airbnb Statistics*, PROPERTY MANAGEMENT (Nov. 8, 2019, 2:23 PM), <https://ipropertymanagement.com/airbnb-statistics> [<https://perma.cc/K9PN-JLF5>].

⁹² *Listings in Disputed Regions*, AIRBNB (Nov. 19, 2018), <https://news.airbnb.com/listings-in-disputed-regions/> [<https://perma.cc/B6F7-MRLK>].

settlements in the West Bank, but would not affect Golan Heights or East Jerusalem, which are also considered to be occupied.⁹³ In the years preceding this decision, Airbnb had faced extensive criticism from the international community for the impact their operation of business in this area had on human rights.⁹⁴ Airbnb's critics argue that by listing these properties, the company is not only profiting from illegal activity which is boosting settlement economies allowing for the furtherance of their development and maintenance, but is also fostering discrimination against Palestinians who are unable to rent or list in these areas.⁹⁵

Nevertheless, in April of 2019, after response from the Israeli government as well as legal action, such as the following case, Airbnb decided to reverse its decision to delist settlement properties.⁹⁶ In *Silber v. Airbnb Inc.*, eleven Israeli settlers—who were U.S. citizens—who listed or planned to list their settlement properties on Airbnb, and nine U.S. citizens who sought out Airbnb rental properties in West Bank Settlements filed suit against Airbnb in Delaware federal court.⁹⁷ The plaintiffs in that case “claim[ed] that under the Fair Housing Act (FHA), Airbnb’s decision to delist illegal settlement properties in the occupied West Bank ‘discriminate[d] against Jews and/or Israelis on its face and in effect on the basis of race, religion and national origin.’”⁹⁸ All four of the legal actions brought against the company were settled.⁹⁹ Accompanying Airbnb’s decision to begin relisting properties

⁹³ *Id.*

⁹⁴ See Amanda McCaffrey, *Airbnb’s Listings in Disputed Territories: A Tortured Compromise*, JUST SECURITY (Nov. 8, 2019, 2:25 PM), <https://www.justsecurity.org/65114/airbnbs-listings-in-disputed-territories-a-tortured-compromise/> [<https://perma.cc/6TY2-KEY6>].

⁹⁵ See Leila Ettachfani, *People Are Deactivating Airbnb for Allowing Listings in the Occupied West Bank*, VICE (Nov. 8, 2019, 2:27 PM), https://www.vice.com/en_us/article/gy45km/airbnb-west-bank-palestine-boycott [<https://perma.cc/V9WU-TZ39>].

⁹⁶ See *Silber v. Airbnb, Inc.*, No. 1:18-CV-01884-RGA, 2019 WL 3997098, at *1 (D. Del. Aug. 23, 2019); Ettachfani, *supra* note 95.

⁹⁷ Amended Complaint at 2–5, *Silber v. Airbnb Inc.*, No. 1:2018cv01884 (D. Del. Nov. 28, 2018).

⁹⁸ *Silber et al. v. Airbnb*, CTR. FOR CONST. RIGHTS (Nov. 8, 2019, 2:30 PM), <https://ccrjustice.org/home/what-we-do/our-cases/silber-et-al-v-airbnb> [<https://perma.cc/LD6Y-A7SM>].

⁹⁹ See Ettachfani, *supra* note 95.

in the region was the decision to take no profits from listings in the West Bank.¹⁰⁰ In a statement listed on Airbnb's website, the company said that "any profits generated for Airbnb ... will be donated to non-profit organizations dedicated to humanitarian aid that serve people in different parts of the world."¹⁰¹ This decision, however, did not come without harsh condemnation from Palestinian authorities as well as international human rights communities.¹⁰² Further, the donation of profits from these areas to humanitarian organizations will likely not be without questioning the impact that accepting these proceeds will make, and if accepted may conflict with their funding standards.¹⁰³

Airbnb's listing of properties in West Bank settlements has a direct connection to the larger Israeli-Palestinian conflict.¹⁰⁴ Business activities from this company and others similar to it, like Booking.com and TripAdvisor, increase the profitability of settlements, making them more sustainable.¹⁰⁵ This increase in sustainability, however, causes these businesses to seem more involved in the facilitation of what has been argued to be "Israel's unlawful transfer of its citizens to the settlements."¹⁰⁶ While such activity indirectly supports the existence and maintenance of settlements, potential violations of human rights law may still be traced back to these corporations, thereby increasing their risk of corporate liability.¹⁰⁷

¹⁰⁰ *Id.*

¹⁰¹ Dan Williams & Brendan Pierson, *Airbnb Reverses on Delisting Israeli Settlements, Won't Profit Off West Bank*, REUTERS (Nov. 8, 2019, 2:41 PM), <https://www.reuters.com/article/us-israel-palestinians-airbnb/airbnb-reverses-on-delisting-israeli-settlements-wont-profit-off-west-bank-idUSKCN1RL2QM> [<https://perma.cc/VPF7-Z6KM>].

¹⁰² *See id.*

¹⁰³ *See* McCaffrey, *supra* note 94. For example, Doctors Without Borders (MSF), a humanitarian group, "refuses donations from companies whose activities conflict with the goals of its humanitarian work or might limit the efficacy of humanitarian aid interventions." *Id.*

¹⁰⁴ *See* DESTINATION: OCCUPATION REPORT, *supra* note 86, at 12.

¹⁰⁵ *Id.* at 8–9.

¹⁰⁶ *Bed and Breakfast on Stolen Land: Tourist Rental Listing in West Bank Settlements*, HUMAN RIGHTS WATCH (Nov. 8, 2019, 2:44 PM), <https://www.hrw.org/report/2018/11/20/bed-and-breakfast-stolen-land/tourist-rental-listings-west-bank-settlements> [<https://perma.cc/5U9U-A55M>].

¹⁰⁷ *See id.*

2. *HP Enterprises*

In 2015, Packard Enterprise (HP-E), formerly known as Hewlett-Packard Company, was founded.¹⁰⁸ HP-E is a multinational corporation based out of the United States which deals mainly in developing and manufacturing information technology services and computer products for business and government use.¹⁰⁹

Within the West Bank, Israeli checkpoints are used as a means of monitoring the Palestinian population, which Israel believes is necessary to “protect Israelis from potential attackers, following a period of suicide bombings in the early 2000s.”¹¹⁰ These checkpoints use a system called BASEL, which scans and collects biometric data through facial recognition on anyone using these checkpoints.¹¹¹ HP-E developed and currently maintains the BASEL system for use at these checkpoints which have been criticized as “racially profil[ing] Palestinians” through the tracking of their movements which is “complicit in the Israeli apartheid which limits the parts of the West Bank which they can access, and which restricts their freedom of movement.”¹¹² Consequently, it has been argued that this involvement breaches Article 13 of the Universal Declaration of Human Rights, which was adopted by the UN General Assembly in 1948, and guarantees individuals the freedom of movement.¹¹³

3. *Caterpillar*

Because the expansion and maintenance of settlements in Area C is a lucrative industry, multinational corporations, such

¹⁰⁸ *Hewlett Packard Enterprise (HPE)*, WHO PROFITS, <https://www.whoprofits.org/company/hewlett-packard-enterprise-hpe/> [<https://perma.cc/7M43-E2TQ>].

¹⁰⁹ *Id.*

¹¹⁰ Daniel Estrin, *Facial Recognition Lets Palestinians Cross Israeli Checkposts Fast, But Raises Concerns*, NPR (Aug. 22, 2019, 11:25 AM), <https://www.npr.org/2019/08/22/752765606/face-recognition-lets-palestinians-cross-israeli-checkposts-fast-but-raises-conc> [<https://perma.cc/CJ3B-3M8T>].

¹¹¹ *See id.*

¹¹² *The Case Against Hewlett-Packard*, PALESTINE SOLIDARITY CAMPAIGN (Nov. 8, 2019, 2:44 PM), <https://www.palestinecampaign.org/case-hewlett-packard/> [<https://perma.cc/XS9X-8V VH>].

¹¹³ G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

as Caterpillar Inc., have chosen to conduct business in the West Bank.¹¹⁴ Caterpillar is a construction manufacturing company based in the United States which is tied to Israeli settlements through its sale of D9 bulldozers.¹¹⁵ D9 bulldozers, in specific, have been and continue to be used by the Israeli Defense Force (IDF) to demolish Palestinian homes which were built without first obtaining a required building permit from the Israeli government.¹¹⁶

This has caused Caterpillar to be the target of extensive criticism from the international human rights community, which alleges that these demolitions of individual homes and Palestinian villages are illegal and occurring for the purpose of expanding and constructing settlements.¹¹⁷

In 2007, *Corrie v. Caterpillar, Inc.*, a class action lawsuit, was brought in the United States Court of Appeals for the Ninth Circuit.¹¹⁸ In this suit filed “on behalf of the parents of Rachel Corrie and four Palestinian families whose relatives were killed or injured when Caterpillar bulldozers demolished their homes.”¹¹⁹ Caterpillar was alleged to have sold D9 bulldozers to Israel with the knowledge that they would be used by the IDF for the purpose of violating international law by demolishing homes and villages for the development of West Bank settlements.¹²⁰ A D9 bulldozer killed Corrie during a protest against the demolition of Palestinian homes and villages. It is argued that Caterpillar has known about the potential violations of international law that are being carried out with their bulldozers since 1989, which is when organizations dedicated to protecting human rights began denouncing their complicity.¹²¹

Corporations such as Airbnb, HP, and Caterpillar contribute significantly to settlement existence and preservation.¹²² By doing

¹¹⁴ Cefo, *supra* note 5, at 803.

¹¹⁵ *Id.* at 803–04.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 804–05.

¹¹⁸ *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 974 (9th Cir. 2007).

¹¹⁹ *Corrie v. Caterpillar*, CTR. FOR CONST. RIGHTS (Nov. 8, 2019, 2:55 PM), <https://ccrjustice.org/home/what-we-do/our-cases/corrie-et-al-v-caterpillar> [<https://perma.cc/9AY4-Z8NZ>].

¹²⁰ Cefo, *supra* note 5, at 804.

¹²¹ *Id.*

¹²² *See* DESTINATION: OCCUPATION REPORT, *supra* note 86, at 8.

so, these companies have continuously faced international disapproval for their involvement with Israel in the ongoing Israeli-Palestinian conflict, which has been the target of criticism for arguable violations of Palestinian human rights.¹²³ The question, however, is where and how these businesses can be tried for violations of international human rights law?

III. JURISDICTION AND POTENTIAL LEGAL CONSEQUENCES: WHERE AND HOW CAN MULTINATIONAL CORPORATIONS BE TRIED FOR VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAWS?

The International Committee of the Red Cross maintains that businesses which operate in conflict zones are subject to the standards of humanitarian law.¹²⁴ It explains that “[i]nternational humanitarian law states that not only perpetrators, but also their superiors and accomplices may be held criminally responsible for the commission of war crimes,” and that businesses who operate in conflict zones are especially at risk of becoming complicit in war crimes.¹²⁵ Furthermore, international law prohibits companies from benefitting from illegal activity.¹²⁶ Article 6 of the United Nations Convention Against Transnational Organized Crime—ratified by Israel, Palestine, and the United States—¹²⁷specifically prohibits individuals and companies from “[t]he acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime.”¹²⁸ While there are a variety of legal methods which can be used to enforce accountability amongst multinational corporations for violations of international law,¹²⁹

¹²³ See Cefo, *supra* note 5, at 804.

¹²⁴ Int’l Comm. Red Cross, *Business And International Humanitarian Law: An Introduction To The Rights And Obligations Of Business Enterprises Under International Humanitarian Law*, 7 (2006), https://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf [<https://perma.cc/3H25-G6UC>].

¹²⁵ *Id.* at 26.

¹²⁶ *Id.* at 23.

¹²⁷ G. A. Res. 55/383, United Nations Conventions Against Transnational Organized Crimes, U.N. Doc. A/55/383 (Nov. 15, 2000).

¹²⁸ G. A. Res. 55/25, United Nations Convention Against Transnational Organized Crime, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

¹²⁹ See, e.g., Riegelhaupt, *supra* note 20, at 26 (some of these methods discussed later on in this Note include civil action by an individual against a corporation, or criminal action in both international and domestic jurisdictions).

difficulties tend to arise in determining the jurisdiction in which companies may be tried.¹³⁰

A. Available Jurisdictions

Prosecutions against corporations accused of violating international human rights laws may occur in international jurisdictions, the International Criminal Court (ICC) for example, national courts within a universal jurisdiction state, or a United States Civil Court under the Alien Tort Claims Act.¹³¹ While each of the following jurisdictions is available, given certain requirements, to bring actions against multinational corporations for violations of international human rights law, they have all proven to be ineffective at holding corporations responsible for a multitude of reasons.¹³² Because of this,¹³³ should consider alternative means of accountability or influence.

1. The International Criminal Court

The International Criminal Court has jurisdiction over any breaches of international human rights law.¹³⁴ The 1998 Rome Statute of the International Criminal Court establishes such jurisdiction.¹³⁵ However, the ICC is essentially a court of last resort, meaning that the ICC will have jurisdiction over a case when “a state is unwilling or unable to hear a case, or if a state’s trials are merely show trials.”¹³⁶ This is because the ICC functions on the principle of complementarity, which aims to grant “jurisdiction to a subsidiary body when the main body fails to exercise its primacy jurisdiction.”¹³⁷ The principle of complementarity demands

¹³⁰ See, e.g., *id.* at 29, 33.

¹³¹ See *id.* at 26–27.

¹³² See *id.* at 35–36.

¹³³ See *id.* at 26–27, 35–36.

¹³⁴ See *id.* at 26–27.

¹³⁵ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, 91–92.

¹³⁶ Riegelhaupt, *supra* note 20, at 27 n.80.

¹³⁷ Xavier Philippe, *The Principles of Universal Jurisdiction and Complementarity: How Do the Two Principles Intermesh?*, 88 INT’L REV. RED CROSS 375, 380 (2006) (discussing the function upon which the International Criminal Court is based).

that criminal justice systems of both the national and international level function to hold each other accountable as subsidiaries in enforcing international criminal laws.¹³⁸

There are a few methods by which the ICC may open an investigation into a potential violation.¹³⁹ If a country is one of 137 signatories to the Rome Statute—making it a state party—it may refer a claim to the court.¹⁴⁰ The ICC, however, does not have jurisdiction over “the territory or nationals of any state that has not accepted the amendments resolution ... for the crime of aggression,”¹⁴¹ unless the case is one where the United Nations Security Council has referred a country’s situation to the court.¹⁴² Furthermore, an ICC prosecutor may decide individually to hear a case which has not been referred by a country that is a state party to the Rome Statute, but may not investigate a non-member state’s situation without first obtaining a referral from the U.N. Security Council.¹⁴³

On June 13, 2014, the Palestinian Authority decided to ratify the Rome Statute, granting jurisdiction to the ICC over violations of international human rights law and war crimes committed in the territory.¹⁴⁴ This decision leaves open the risk for liability to be found against corporations benefitting from operation within the West Bank.¹⁴⁵ For example, companies such as Airbnb, HP Enterprises, and Caterpillar, which have been discussed above, may be deemed complicit in violations of international human rights laws based on the legal framework provided by the Rome Statute of the International Criminal Court, specifically in regards to the purpose standard for *mens rea* upheld by the court.¹⁴⁶ According to the *Report of the International Commission*

¹³⁸ *Id.*

¹³⁹ *Id.* at 377–78 n.6.

¹⁴⁰ See Riegelhaupt, *supra* note 20, at 27 n.80.

¹⁴¹ *In Hindsight: The Security Council and the International Criminal Court*, SEC. COUNCIL REP. (July 31, 2018), https://www.securitycouncilreport.org/monthly-forecast/2018-08/in_hindsight_the_security_council_and_the_international_criminal_court.php [<https://perma.cc/3D7Y-T7MT>].

¹⁴² The 16th session of the Assembly of States Parties decided this matter. *Id.*

¹⁴³ See Riegelhaupt, *supra* note 20, at 27 n.80.

¹⁴⁴ *Id.* at 27.

¹⁴⁵ *Id.*

¹⁴⁶ See *id.* at 28.

of *Jurists' Expert Legal Panel on Corporate Complicity in International Crimes*, a company could be held legally accountable for complicity in gross human rights abuses through enabling, exacerbating, or facilitating such abuses.¹⁴⁷

To determine if a corporation has enabled the carrying out of abuses, a court may look to whether the abuses would have occurred if not for the company's conduct.¹⁴⁸ In many ways, this analysis would be centered around causation.¹⁴⁹ Nevertheless, because scenarios involving gross human rights abuses are inherently complex in nature, there are always many different causes.¹⁵⁰ In these cases, it is, therefore, necessary to demonstrate a finding that the conduct of a corporation was "at least *one* such crucial ingredient" in the commission of the crime(s).¹⁵¹ An example of the type of situation where a court could find a corporation to have enabled the perpetration of a crime is where a company provided the tools necessary for a government agency to carry out the illegal destruction of clean water access to civilians.¹⁵² In such a situation, a corporation has become a crucial link in the chain of causation leading to the crime committed by the actor, which has been enabled by the corporations act or omission.¹⁵³

Even if a multinational corporation has not explicitly enabled gross human rights violations to take place, it could still be held responsible if found to have engaged in conduct which exacerbated the harm.¹⁵⁴ Meaning that the action taken by the company "increased the range of human rights abuses committed by the principal actor, the number of victims, or the severity of the harm suffered by the victims."¹⁵⁵

Finally, if a company's conduct changes how abuses or violations of the law are carried out—thus facilitating the crime—may

¹⁴⁷ 1 INT'L COMM'N OF JURISTS, CORPORATE COMPLICITY & LEGAL ACCOUNTABILITY: FACING THE FACTS AND CHARTING A LEGAL PATH 1, 10 (2008) [hereinafter ICJ REPORT].

¹⁴⁸ *Id.* at 8–10.

¹⁴⁹ *Id.* at 8.

¹⁵⁰ *Id.* at 7.

¹⁵¹ *Id.* at 11.

¹⁵² *Id.* at 10–12.

¹⁵³ *See id.* at 11.

¹⁵⁴ *Id.* at 10–11.

¹⁵⁵ *Id.* at 12.

still find liability.¹⁵⁶ In an aiding and abetting case, the ICC will find it unnecessary, per international criminal law statutes, to prove that without assistance by a company the abuse would not have been perpetrated.¹⁵⁷ Rather, for a prosecutor to successfully argue that a corporation has facilitated a crime, it is only necessary to prove that the assistance caused the crime to be carried out in a substantially different manner.¹⁵⁸

As mentioned above, the *mens rea* standard upheld by the ICC allows for “an accomplice [to be found] 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.’”¹⁵⁹ According to the International Committee of the Red Cross (ICRC), perpetrators are not likely to be found solely responsible for violations of international criminal laws.¹⁶⁰ Rather, their accomplices, and even superiors may be held as complicit in the commission of these crimes.¹⁶¹ Consequently, in the prosecution of business enterprises for war crimes, this act of involvement by corporations is probably most significant.¹⁶² Typically, the ICC will prosecute corporations in these matters under the crime of aiding and abetting, which consists of two prongs: *mens rea* and *actus reus*.¹⁶³ While the *actus reus* is defined as the outward and physical “act or omission”¹⁶⁴ of a crime, the *mens rea*, in contrast, refers to the criminal intent of an individual during the commission of a crime.¹⁶⁵ This requirement of the “guilty mind” for particular

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 11.

¹⁵⁸ *Id.*

¹⁵⁹ Riegelhaupt, *supra* note 20, at 28 (quoting Rome Statute of the International Criminal Court art. 25, July 17, 1998, 2187 U.N.T.S. 90).

¹⁶⁰ *See id.* at 21.

¹⁶¹ *See id.*

¹⁶² Because a case against a multinational corporation brought in the International Criminal Court is one that will likely be brought under the crime of aiding and abetting, the complicity of a corporation through either enabling, exacerbating, or facilitation is most relevant to the analysis of liability. *See* ICJ REPORT, *supra* note 147, at 10–11.

¹⁶³ *See* Riegelhaupt, *supra* note 20, at 21.

¹⁶⁴ *Actus Reus*, CORNELL LEGAL INFO. INST., https://www.law.cornell.edu/wex/actus_reus [<https://perma.cc/LRZ3-JLN6>].

¹⁶⁵ *Mens Rea*, CORNELL LEGAL INFO. INST., https://www.law.cornell.edu/wex/mens_rea [<https://perma.cc/3BYQ-U8JJ>].

crimes is premised upon the notion that an individual “must possess a guilty state of mind and be aware of his or her misconduct” in order to convict based on certain elements listed in a criminal statute.¹⁶⁶ However, even under this standard, the complexity of cases and conflicts arising from actions by multinational corporations within the West Bank, makes the probability of these businesses being held within the jurisdiction of the ICC unlikely.¹⁶⁷ Therefore, it is more beneficial to examine alternative jurisdictions which may be more suitable for holding these types of businesses accountable if found to be responsible or in any way related to the carrying out of gross human rights violations within Israeli settlements in the West Bank.¹⁶⁸

2. Courts With Universal Jurisdiction

Courts with universal jurisdiction (UJ) statutes are afforded the application of international criminal law for prosecutions involving foreign individuals at the local level.¹⁶⁹ The idea of universal jurisdiction stems from the belief that “certain crimes are so harmful to international interests that states are . . . obliged—to bring proceedings against the perpetrator, regardless of the location of the crime and the nationality of the perpetrator or the victim.”¹⁷⁰ More specifically, universal jurisdiction “aims to hold state officials accountable for crimes when they would otherwise remain immune to punishment in their own countries.”¹⁷¹ However, this principle of universal jurisdiction is not applied consistently in every case.¹⁷² And further, because states are permitted to grant universal jurisdiction to domestic courts for crimes which are not a violation of international law, implementation of the general idea remains difficult.¹⁷³

¹⁶⁶ *Id.*

¹⁶⁷ See Riegelhaupt, *supra* note 20, at 42.

¹⁶⁸ See *id.* at 29.

¹⁶⁹ See Mary Robinson, *Foreword to PRINCETON PROJECT ON UNIVERSAL JURISDICTION, THE PRINCETON PRINCIPLES ON UNIVERSAL JURISDICTION* 15, 16 (Program in L. and Pub. Aff. 2001).

¹⁷⁰ *Id.*

¹⁷¹ See Riegelhaupt, *supra* note 20, at 29.

¹⁷² *Id.*

¹⁷³ *Id.*

Multinational corporations operating business out of the West Bank may be subject to prosecution in a court—whose country has invoked universal jurisdiction—for complicity in the perpetration of human rights violations.¹⁷⁴ These corporations face particular legal danger from countries who have both ratified broad universal jurisdiction statutes as well as voiced their support for Palestinian rights.¹⁷⁵ For example, the United Kingdom (U.K.): in 2001, the U.K. passed the United Kingdom’s International Criminal Court Act.¹⁷⁶ This act permits the use of universal jurisdiction over foreign crimes perpetrated by non-citizens on the condition that the accused is physically in the U.K. at the time of initiating prosecution.¹⁷⁷ For corporations with offices located within the United Kingdom, this requirement is satisfied.¹⁷⁸ Airbnb, HP, and Caterpillar all currently have an office located within the U.K.¹⁷⁹

In years past, the United Kingdom has used this statute to prosecute individuals accused of committing gross violations of human rights “such as Nazi collaborator Anthony Sawonuk, Afghan warlord Faryadi Sarwar Zardad, and Chilean Dictator Augusto Pinochet.”¹⁸⁰ While this option for the U.K. to utilize its UJ statute has historically been an attractive option, recent controversy regarding its use against Israelis poses some concern.¹⁸¹ Furthermore, Israeli individuals began to avoid traveling to the United Kingdom out of fear of prosecution for crimes which occurred during their service in the Israeli Defense Force (IDF), for example.¹⁸² This was because under the United Kingdom’s

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 30.

¹⁷⁶ *Id.* at 31.

¹⁷⁷ *See id.*

¹⁷⁸ *See id.* at 31 n.94.

¹⁷⁹ *Company Details*, AIRBNB, <https://www.airbnb.co.uk/about/company-details> [<https://perma.cc/C5AC-BKNM>]; *Office Locations United Kingdom*, HP, <https://www8.hp.com/uk/en/contact-hp/office-locations.html> [<https://perma.cc/KE2J-ESLH>]; *United Kingdom*, CATERPILLAR, <https://www.caterpillar.com/en/company/global-footprint/eame/united-kingdom.html> [<https://perma.cc/SG5M-KFYD>].

¹⁸⁰ *See* Riegelhaupt, *supra* note 20, at 31.

¹⁸¹ *Id.* at 32.

¹⁸² Jonny Paul, *UK Amends Law to Protect Israelis from Prosecution*, THE JERUSALEM POST (Sept. 15, 2011, 5:00 PM), <https://www.jpost.com/Diplomacy>

UJ statute, individuals were able to submit complaints of human rights violations and war crimes against military personnel, allowing activists to target high profile Israelis.¹⁸³ Consequently, in 2011, the U.K. amended their universal jurisdiction law to require the director of public prosecutions to provide consent for issuing an arrest warrant under the statute.¹⁸⁴ This change was likely a means of preserving the relationship between the U.K. and Israel.¹⁸⁵

While it remains feasible for the U.K. to prosecute complicity in war crimes and human rights violations by corporations such as Caterpillar, an argument could be made that an attempt to prosecute a corporation by a foreign court under a UJ statute would fail because the principle of *forum non conveniens* would be invoked.¹⁸⁶ This idea of *forum non conveniens* allows a court the discretion to dismiss a case in order for it to be heard in a forum that is more convenient to the parties involved.¹⁸⁷ In this case, it would be argued that Israel is a more conveniently situated jurisdiction, and therefore, a case against a company operating out of the West Bank should be heard there.¹⁸⁸ This argument, however, is very flawed. Not only have Israeli courts refused to rule on the legality of West Bank Israeli settlements,¹⁸⁹ but many Israeli laws have also “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.”¹⁹⁰ Furthermore, many claims against corporations such as HP and Airbnb are centered around their involvement in developing and maintaining West Bank Settlements.¹⁹¹ This

-and-Politics/UK-amends-law-to-protect-Israelis-from-prosecution (last visited Apr. 2, 2021).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ See Riegelhaupt, *supra* note 20, at 29.

¹⁸⁷ *Id.* at 32 n.97.

¹⁸⁸ *Id.* at 32.

¹⁸⁹ HCJ 4481/91 Gavriel Bargil v. Government of Israel 47(4) PD 210 (1993) (Isr.).

¹⁹⁰ See Riegelhaupt, *supra* note 20, at 32.

¹⁹¹ UN lists firms linked to illegal Israeli settlements in West Bank, ALJAZEERA (Feb. 13, 2020), <https://www.aljazeera.com/news/2020/02/issues-re>

poses an issue against the argument challenging a venue outside of Israel because, in 2018, Israel's Ministerial Committee for Legislation approved the advancement of Regulation Law 2, a bill which would require the retroactive legalization of 66 West Bank settlements over a span of two years.¹⁹²

3. *United States Civil Courts Under the Alien Tort Claims Act*

Another potential jurisdiction in which a claim against a multinational corporation for their complicity in violations of the law is within a United States Civil Court.¹⁹³ This type of claim would most likely need to be brought under the Alien Tort Claims Act (ATCA), also known and referred to as the Alien Tort Statute (ATS).¹⁹⁴ The U.S. Judiciary Act of 1789—which the ATCA is a part of—provides that “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.”¹⁹⁵ The Supreme Court later interpreted this statute to mean that non-U.S. citizens would be able to seek remedy in a U.S. court for violations of international human rights law perpetrated outside of the United States.¹⁹⁶ Claims filed under the Alien Tort Statute eventually began to multiply rapidly as multinational corporations began facing claims of complicity in gross human rights violations.¹⁹⁷ However, in 2013, the Alien Tort

port-firms-active-illegal-west-bank-settlements-200212162025947.html [https://perma.cc/8V7V-L8U7].

¹⁹² Jacob Magid, *Ministers Advance Bill that Would Legalize 66 Outposts Deep in the West Bank*, THE TIMES OF ISRAEL (Dec. 16, 2018), <https://www.timesofisrael.com/ministers-advance-bill-that-would-legalize-66-outposts-deep-in-the-west-bank/> [https://perma.cc/XAL3-6R4K].

¹⁹³ See Riegelhaupt, *supra* note 20, at 33.

¹⁹⁴ *Id.*

¹⁹⁵ 28 U.S.C. § 1350 (2012) (Judiciary Act of 1789, ch. 20, 1 Stat. 73).

¹⁹⁶ See *Filartiga v. Pena-Irala*, 630 F.2d 876, 878 (2d Cir. 1980) (demonstrating the interpretation of the Alien Tort Claims Act by the court to allow non-U.S. citizens to bring cases in United States courts for violations of law perpetrated abroad); see also *Sosa v. Alvarez-Machain*, 542 U.S. 692, 694 (2004) (same).

¹⁹⁷ See *Doe v. Unocal Corp.*, 248 F.3d 915, 920 (9th Cir. 2001) (showing that individuals began to file claims, in increase, against multinational corporations for their complicity in violations of international human rights law); see also *Wiwa v. Royal Dutch Petrol. Co.*, 226 F.3d 88, 104 (2d Cir. 2000) (same).

Statute was limited by the Supreme Court's decision in *Kiobel v. Royal Dutch Petroleum*.¹⁹⁸ In *Kiobel*, the Court upheld the threshold presumption against the extraterritoriality application to the Alien Tort Statute.¹⁹⁹ This presumption is the “longstanding principle of American law ‘that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.’”²⁰⁰ This means that courts must apply this principle to ATS claims under a presumption against extraterritoriality.²⁰¹ Therefore, a plaintiff must be able to overcome this presumption through a showing that their claim under the ATCA—with sufficient force—“touches and concerns” the United States.²⁰² However, the presence of a business in the United States is not in itself sufficient to overcome such a heightened presumption.²⁰³ Rather, as Justice Breyer explains in his concurring opinion in *Kiobel*, jurisdiction could be extended “where (1) the alleged tort occurs on American soil, (2) the defendant is an American national, or (3) the defendant’s conduct substantially and adversely affects an important American national interest.”²⁰⁴ However, while the difficulty of bringing a claim under the ATCA was increased by *Kiobel*, the 2018 Supreme Court decision in *Jesner v. Arab Bank, PLC*, has likely destroyed any chance of a successful claim by non-citizens against foreign corporations under the statute.²⁰⁵ In a 5–4 decision, the Supreme Court in *Jesner* held “that corporations can no longer be defendants under the Alien Tort Statute.”²⁰⁶ Meaning that victims of human rights violations in the international arena will no longer have

¹⁹⁸ *Kiobel v. Royal Dutch Petrol. Co.*, 569 U.S. 108 (2013).

¹⁹⁹ *Id.* at 108–09.

²⁰⁰ *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) (quoting *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 285 (1949)).

²⁰¹ *Id.*

²⁰² *See Kiobel*, 569 U.S. at 124–25 (“And even where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application.”).

²⁰³ *Id.* at 125.

²⁰⁴ *Id.* at 127.

²⁰⁵ *Jesner v. Arab Bank, PLC*, 584 U.S. ____ (2018).

²⁰⁶ Emily Mendoza, *Jesner v. Arab Bank, PLC: Corporate Enemies and the Alien Tort Statute*, 96 *DENV. L. REV.* 669, 669 (2019) (explaining the Court’s decision in *Jesner v. Arab Bank, PLC*).

the ability to seek remedy in a U.S. federal court, thus demonstrating an unwillingness by the court to hold corporations liable.²⁰⁷

The challenge of prosecuting multinational corporations for criminal violations of international law persists, and the remedies available to victims of these perpetrations are being severely limited by jurisdictional matters and court opinions.²⁰⁸ However, while it is inherently difficult to hold corporations liable under violations of international law based on their conducting business in the West Bank, it is not the only means of accountability available.²⁰⁹ As corporations and their shareholders are becoming more involved in social issues the concept of corporate accountability under U.S. corporate law is becoming a new avenue for correcting the improper decisions of corporate directors.²¹⁰

IV. THE SHAREHOLDER PROPOSAL SOLUTION

A. *What Is a Shareholder Proposal?*

The imposition of corporate liability under both international law and the Alien Tort Statute are only potential, and seemingly failed, solutions to penalize violations of international humanitarian law by multinational corporations.²¹¹ Because of this, shareholder proposals should be considered as solutions to address and influence a corporation's decision to conduct business in the West Bank and other disputed territories. Shareholder proposals have become increasingly popular as a device for negotiating corporate policy, actions, and private rules.²¹² A shareholder proposal is "a mechanism through which shareholders can put qualifying proposals up for a full shareholder vote."²¹³ This allows shareholders to submit recommendations to encourage the corporation to engage in a certain course of action.²¹⁴ However, before a proposal

²⁰⁷ *Id.* at 727.

²⁰⁸ *See id.* at 704.

²⁰⁹ *See* Sarah C. Haan, *Shareholder Proposal Settlements and the Private Ordering of Public Elections*, 126 *YALE L.J.* 262, 265 (2016).

²¹⁰ *Id.*

²¹¹ *See* Mendoza, *supra* note 206, at 704–06.

²¹² *See* Haan, *supra* note 209, at 265.

²¹³ *Id.* at 266.

²¹⁴ *Id.* at 269.

is effectuated, it must successfully evade exclusion by the company.²¹⁵ Under the Securities Exchange Act of 1934 (the Act), which allows for proposals of this nature, a corporation may choose to “exclude proposals from shareholder meetings if 1) the proposal fails to comply with the statutory procedural or eligibility guidelines, or 2) the proposal’s subject matter is excludable under one of the statutory exceptions.”²¹⁶ Under Rule 14a-8 of section 240 of the Act,²¹⁷ a company *shall* include a shareholder proposal in its proxy statement, unless it may be statutorily excluded under the Act.²¹⁸ Because shareholder proposals are voted on by the corporation’s shareholders, and can urge the company to take specific actions that cost time, money, and other resources, companies often look for ways to utilize the exceptions to the rule.²¹⁹ Rule 14a-8(i)(7) is a statutory exception which “allows a company to exclude shareholder proposals that deal with matters relating to the company’s ‘ordinary business operations.’”²²⁰ This exception “allows a company to exclude proposals that involve business matters that are mundane in nature, and do not involve any substantial policy or other considerations.”²²¹ Rule 14a-8(i)(7), often referred to as the ordinary business exception, has caused substantial debate and confusion due to its “vague language and inconsistent [Securities Exchange Commission (SEC)] interpretation.”²²²

Currently, the SEC has no binding guidelines for interpreting the ordinary business exception, so it has to make a determination about its applicability on a case-by-case basis.²²³ However, the SEC has provided two factors that it considers when making an analysis.²²⁴ The SEC first considers whether the subject matter of the proposal relates to a task that is “fundamental

²¹⁵ *Id.* at 273.

²¹⁶ Sung Ho (Danny) Choi, *It’s Getting Hot in Here: The SEC’s Regulation of Climate Change Shareholder Proposals Under the Ordinary Business Exception*, 17 DUKE ENV’T L. & POL’Y F. 165, 168 (2006).

²¹⁷ See 17 C.F.R. § 240.14a-8 (2006).

²¹⁸ See Choi, *supra* note 216, at 168.

²¹⁹ See *id.* at 167–68.

²²⁰ *Id.* at 173 (citing 17 C.F.R. § 240.14a-8(i)(7) (2006)).

²²¹ See Choi, *supra* note 216, at 173.

²²² *Id.*

²²³ *Id.* at 173–74.

²²⁴ *Id.* at 174.

to management's ability to run a company on a day-to-day basis,"²²⁵ and if so, will approve exclusion.²²⁶ The SEC also examines whether the proposal seeks to heavily micromanage the corporation, in which case, the SEC would also decide that exclusion is proper because shareholders are not in a position to make such decisions.²²⁷ However, the SEC will find a shareholder proposal to be appropriate if it "focuses on a sufficiently significant social policy issue."²²⁸

B. Use of Shareholder Proposals as a Way to Promote Corporate Social Responsibility

In recent years, shareholder proposals which "encourage[] corporations to adopt socially responsible policies[,] or corporate social responsibility (CSR) policies, have made sizeable progress in "solidifying their role as one of the most potent means of effectuating CSR."²²⁹ Namely, in 2014, trends demonstrated that of the shareholder proposals submitted for inclusion on proxy statements at Russell 3000 companies, almost 40% were related to issues of social policy.²³⁰ Because of this increase in support for and use of socially responsible shareholder proposals, "the SEC has become far more reluctant to exclude proposals relating to CSR issues," such as LGBT rights, environmental policy, and human rights concerns.²³¹ For example, the SEC, in 2001, rejected a request by American Eagle Outfitters, Inc., which asked to exclude a CSR proposal that requested the company "adopt concrete and transparent human rights principles."²³² Moreover, proposals of this nature have steadily begun to garner support within many corporations' management structures, and more shareholder proposals related to social policy concerns are being backed by company boards of directors.²³³

²²⁵ *Id.* (citing Amendments to Rules of Shareholder Proposals, Exchange Act Release No. 34-40018, 63 Fed. Reg. 29106, 29108 (May 28, 1998) (to be codified at 17 C.F.R. pt. 240)).

²²⁶ *See* Choi, *supra* note 216, at 174.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Matthew J. Petrozziello, *Beyond Cracker Barrel: Shareholder Proposals as a Means of Effectuating CSR Policies*, 13 RUTGERS BUS. L. REV. 22, 23, 26 (2016).

²³⁰ *Id.* at 27.

²³¹ *Id.* at 28–29.

²³² *Id.* at 29.

²³³ *Id.*

However, it should be acknowledged that while “recent statistics show that the needle is moving in a favorable direction for CSR proposals,” these sorts of proposals have typically not acquired the majority support by shareholders needed for approval.²³⁴ Furthermore, inclusion on the proxy ballot and a majority vote does not bind action by the corporation, it is only an encouragement.²³⁵ Nevertheless, it is important to mention that the success of CSR proposals are not simply based upon majority vote, nor whether they “result in the exact action requested.”²³⁶ Instead, shareholder proposals can, and often do, have the effect of achieving successful change without even being placed on the proxy ballot, or securing a majority vote.²³⁷ One example of success for a socially responsible shareholder proposal is the ability to “draw media attention to serious social issues,” such as the infamous proposal for Cracker Barrel to “prevent discriminatory employment practices against members of the LGBT community [which] resulted in a highly publicized dialogue about discrimination based upon sexual preference.”²³⁸ In addition to success of this nature, activist shareholders are often considered prosperous if their proposals are able to both begin discussions with a company’s board of directors and have the effect of pressing the board to take a variety of actions on the social issues brought forth by the shareholder’s proposal.²³⁹ Socially responsible proposals have begun to progress changes within corporations through an assortment of methods and tactics, and increased SEC policy has created a supportive environment for this type of activism.²⁴⁰ Because of this, shareholder proposals should be considered as viable solutions to influence director action over the decision to conduct business in disputed territories, such as the West Bank, which leaves businesses open to legal, social, and economic risk.²⁴¹

²³⁴ *Id.*

²³⁵ *Id.* at 30.

²³⁶ *Id.*

²³⁷ *Id.* at 28–29, 33.

²³⁸ *Id.* at 31.

²³⁹ *Id.* at 32.

²⁴⁰ *Id.* at 40.

²⁴¹ *See id.*

C. Shareholder Proposals Should Be Used to Hold Corporations in the West Bank Accountable for Complicity in Violations of Human Rights Law

The modifications in corporate social policy that may be proposed by shareholders would be effective as a means of protecting victims of human rights abuses in the West Bank.²⁴² Although there are jurisdictions where a civil suit or criminal action can be brought against a corporation, as Section III.A details, these jurisdictions have increasingly stopped working as a sufficient place to hold corporations accountable.²⁴³ Because it has become so increasingly difficult, as policy has changed,²⁴⁴ to bring an action against a corporation in an attempt to hold them liable for complicity in violations of international human rights law within the West Bank, the solution is arguably in the hands of company shareholders to step in and make changes.²⁴⁵

Corporations have a large role in society that recognizably cannot be reduced to only economics.²⁴⁶ The two most frequently argued justifications for social issue based shareholder proposals are focused on (1) the idea that shareholders are owners “who have—and should have—an interest in the social and political impact of a corporation[,]”²⁴⁷ and (2) “that shareholder proposals provide a useful safety valve in that they permit shareholders to raise their concerns before management and their fellow shareholders in a public forum in which the corporation’s leadership must provide some sort of response.”²⁴⁸ The social responsibility of corporations has long been acknowledged to extend well past their employees and shareholders.²⁴⁹ This means that a corporation’s board of directors (or other management) can take into account the “interests of creditors, employees, customers, and the industry as a whole or even the community at large” in its decision

²⁴² See Choi, *supra* note 216, at 174.

²⁴³ See *supra* Section III.A.

²⁴⁴ See Mendoza, *supra* note 206, at 699.

²⁴⁵ See Haan, *supra* note 209, at 265.

²⁴⁶ D. A. Jeremy Telman, *Is the Quest for Corporate Responsibility a Wild Goode Chase? The Story of Lovenheim v. Iroquois Brands, Ltd.*, 45 AKRON L. REV. 291, 336 (2012).

²⁴⁷ *Id.* at 335.

²⁴⁸ *Id.* at 336.

²⁴⁹ *Id.*

making process.²⁵⁰ Furthermore, corporations have a responsibility to act as good corporate citizens to protect the communities in which they conduct business, meaning that directors must allow shareholders the ability to advise shareholder proposals that contribute to socially beneficial decision making.²⁵¹ While multinational corporations from around the world have found a plethora of business opportunities in the West Bank, that is not to say that there is no substantial risk with conducting business in a disputed territory.²⁵² This risk, namely, engaging in action which is complicit in the violation of human rights, is a social issue on which shareholders may submit proposals to effectuate change in company policy.²⁵³

The history of shareholder proposal subjects is full of social issues such as civil rights, gender equality, diversity, concerns about the environment, and human rights.²⁵⁴ This type of activism shows that shareholders function to advance issues that are not just individual concerns, but concerns of social significance which impact both the short and “long-term sustainability of the corporation.”²⁵⁵ Because “a robust shareholder proposal platform is critical to corporate governance as a vital source of information for directors and officers,”²⁵⁶ shareholders of corporations which operate business in the West Bank should be encouraged to offer proposals as a way of ensuring that their corporations are socially responsible. Since these corporations cannot be sufficiently corrected through formal civil or criminal action,²⁵⁷ this tool provided to shareholders is not just a method of promulgating specific changes.²⁵⁸ Rather, it can also be used by shareholders in corporations, such as Caterpillar, HP Enterprises, and Airbnb, as a signal to their corporations’ directors that a change in policy regarding business conducted in the West Bank needs to be made.²⁵⁹

²⁵⁰ *Id.*

²⁵¹ *Id.* at 338.

²⁵² *See supra* Section II.A.

²⁵³ *See* Telman, *supra* note 246, at 338.

²⁵⁴ Lisa M. Fairfax, *Social Activism Through Shareholder Activism*, 76 WASH. & LEE L. REV. 1129, 1161 (2019).

²⁵⁵ *Id.* at 1162.

²⁵⁶ *Id.* at 1161–62.

²⁵⁷ *See* Mendoza, *supra* note 206, at 704, 727.

²⁵⁸ *See* Fairfax, *supra* note 254, at 1161–62.

²⁵⁹ *Id.* at 1161–62.

CONCLUSION

The imposition of corporate liability under both international law and the Alien Tort Statute have proved to be ineffective solutions to hold multinational corporations accountable for violations of international human rights law.²⁶⁰ Therefore, the use of shareholder proposals is a feasible solution to address a corporation's decision to conduct business in disputed territories, namely, the West Bank. As Israeli settlements in the West Bank have continued to expand over the past fifty-two years, Israel has increasingly faced criticism from the international community surrounding its actions and infrastructure development within disputed territories.²⁶¹ Because of this increased disapproval targeted at Israel, corporations operating businesses out of West Bank settlements have also begun to face a backlash from communities worldwide over their alleged contributions to violations of international human rights laws.²⁶² The conducting of business in disputed territories comes with numerous side effects, which can have an enormous and negative financial impact on these companies.²⁶³ Not only are corporations leaving themselves potentially subject to criminal and civil liability because of their own conduct or complicity in another's conduct, they are also exposed to mass boycott efforts, which are encouraged by movements such as BDS.²⁶⁴

Although there are a few different avenues by which corporations can be held legally accountable for their actions on both a domestic and international level, they have seemingly proved ineffective.²⁶⁵ As a result, these businesses continue to place their shareholders at risk financially by engaging in internationally condemned conduct.²⁶⁶ This Note proposes that because shareholders

²⁶⁰ See Mendoza, *supra* note 206, at 704, 727.

²⁶¹ See Orevi, *supra* note 1, at 105.

²⁶² See Ahituv, *supra* note 67.

²⁶³ Some financial impacts may include being boycotted, excluded from investment portfolios, or being found either criminally or civilly liable for complicity in violations of international human rights law. See THINK TWICE REPORT, *supra* note 3, at 30–33.

²⁶⁴ See Collins, *supra* note 28.

²⁶⁵ See *supra* Section III.A.

²⁶⁶ See THINK TWICE REPORT, *supra* note 3, at 30–33.

have become increasingly aware and engaged in social policy matters, they are in a unique position to act as a solution for change and corporate accountability where both the international and domestic legal avenues are falling behind.²⁶⁷ Not only is the opportunity for shareholder proposals to make real change in a company's actions, specifically in relation to matters stemming from social policy concerns, abundant, it is a necessary way to ensure corporate accountability to those both in and outside of the business's walls.²⁶⁸

Until a time when both international and domestic law can function to properly and effectively hold multinational corporations accountable for their actions within disputed territories, such as the West Bank, alternative solutions must be studied. This Note hopes to encourage future development in the concept of using shareholder proposals as a viable solution that can be applied to social issues deriving not only from a corporation's conducting of business within disputed territories, but also general business activities that may give rise to social concerns.

²⁶⁷ See *supra* Section III.A.

²⁶⁸ See Fairfax, *supra* note 254, at 1161–62.